GOVERNOR: In the absence of a protest as contemplated by Art. V, Sec. 37, presumption is that bill was not amended on passage so as to change its original purpose, which presumption is conclusive; the amendment made by Senate to H. B. 431, does not change its original purpose.

August 11, 1941

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Hon. Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

Dear Governor:

You have presented the following for our opinion:

"House Bill 431 originated in the House of Representatives as an Act to define certain terms as used in Section 5720, R. S. Mo. 1939. After its passage by the House of Representatives, the Bill was amended in the Senate to include the exemption from regulation by the Public Service Commission of interstate busses and trucks operating in the state only in 'border' cities.

"There is here attached the House Bill as introduced and passed by the House of Representatives, the Senate amendments thereto, the truly agreed to and finally passed Bill, and a copy of the protest of Representative H. P. Lauf that was attached to the Bill when presented to the Governor. Apparently Senator Donnelly protested the Bill in the Senate. See page 1384 of the Senate Journal for Thursday, July 10, 1941.

"The question arises as to whether the Bill, as finally passed, violates Section 25 of Article IV of the Constitution."

Section 25 of Article IV of the Constitution is as follows:

> "No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose."

Section 37 of Article IV pertains to the signing of bills by the presiding officer of each house and provides, in part, as follows:

> "* * * If in either house any member shall object that any substitution, omission or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the house, or that any particular clause of this article of the Constitution has been violated in its passage, such objection shall be passed upon by the house, and if sustained, the presiding officer shall withhold his signature; but if such objection shall not be sustained, then any five members may embody the same, over their signatures, in a written protest, under oath, against the signing of the bill. Said protest, when offered in the house, shall be noted upon the journal, and the original shall be annexed to the bill to be considered by the Governor in connection therewith."

In State ex rel McCaffery vs. Mason, 155 Mo. 486, l. c. 495, the above constitutional provisions were under consideration. The court commenting on the effect of a protest noted on the journal, said:

"'As no objection or protest is "noted upon the journal" of either branch of the General Assembly, the only natural and reasonable conclusion for us to reach is that benign conclusion of the law itself, sanctioned by the wisdom of ages, which presumes in favor of right, and not in favor of wrong. Similar presumptions are daily indulged in respecting judicial proceedings, and no reason occurs why a similar liberality of inference should not obtain in regard to legislative proceedings in many instances. Viewing the subject in this light, we regard it as unimportant that the journals of the respective houses do not disclose that strict observance of formality which should properly attend the passage of a bill through its various legislative stages, as, for instance, that the presiding officer suspended all other business and declared that such bill would then be read, and that, if no objections were made, he would sign the same, to the end that it might become a law, nor that the bill was immediately sent to the other house. Counsel for respondent fails to observe that section 37, while requiring these things to be done, and these forms to be observed, nowhere requires that they be noted on the journal; the only facts requisite to be noted there, as specified in that section, being that of the signing of the bill and of any protest that may be offered.' (State ex rel. v. Mead, 71 Mo. loc. cit. 271, 272.)

"Mead's case received the unanimous approval of the members of this court, and was approvingly followed in State ex rel. v. Field, 119 Mo. 593.

> "Under these rulings it must be held that in the absence of a protest, as already indicated, pointing out in what particulars the Constitution has been violated during the passage of the bill, that it will be presumed the Legislature was not remiss in its duty in that regard, although the journals may have failed affirmatively to record the performance of such duty. This presumption forecloses any investigation as to what occurred during the progress of the bill either as to the occurrence of any substitution, omission or insertion, while on its passage, unless it be the failure to conform to some mandatory requirement of the Constitution like that pointed out in Mead's case, when discussing the initial clause of Section 37, supra, which fails to make entry on the journal of the recital of obedience to such mandatory requirement. But, it is obvious that these constitutional provisions which were designed to set forth the formulae incident to the passage of a bill, are wholly separate and apart from the considerations which go to the constitutionality of a bill, regardless of the strictest conformity to constitutional requirements which may have marked its course from its embryonic stage down to its final passage and approval."

Senate Journal, page 1384, reflects the purported protest of Senator Donnelly and shows that the same was offered in connection with raising a point of order at the time the amendment complained of was offered in the Senate. The President overruled the point of order as "not well taken" which ruling was not appealed from.

House Journal, page 1851, shows the purported protest of Representative Lauf and reflects that it was offered at the time it was moved that the House concur in the Senate amendment. No action of any kind was taken, by the Speaker of the House or by the House, on the purported protest of Mr. Lauf.

As above stated, Section 37 of Article IV relates wholly to the signing of bills by the presiding officers of either house and that portion quoted pertains to what a member of either house may do by way of raising an objection to the signing of a bill.

House Journal, page 1891, reflects the signing of House Bill No. 431 in the House and does not show that any protest was made by any member to the signing thereof. Senate Journal, page 1527, reflects the signing of House Bill No. 431, by the President of the Senate, and does not show that any member of the Senate registered any protest to the signing of said bill. On the contrary, each of these journal entries expressly state "no objections being made", the bill is read and signed.

From the above it therefore appears that the purported objections filed by Senator Donnelly and Representative Lauf are not in fact the objections contemplated being made by the constitution and, therefore, should not have been annexed to the bill and sent to the Governor for his consideration.

Further, in the Mason case, supra, the court lays down the rule that in the absence of a protest pointing out in what particulars the constitution has been violated, in the passage of a bill, it is presumed that no violations took place and that that presumption forecloses any investigation as to what occurred during the progress of the bill on passage. The court in that case was speaking of the protest contemplated by Section 37 of Article IV which is a protest at the time the bill is taken up to be signed by the presiding officer of either house.

However, we will assume that a valid protest was entered in proper form in the Journal of Proceedings of the proper House of the Sixty-First General Assembly.

We have examined numerous authorities on this subject, which may be found generally in the Digest under "Statutes" under Division No. 16. The authorities are best summarized in Moeller v. Board of Wayne County Supervisors, 272 N. W. 886, 279 Mich. 505, being a case by the Supreme Court of Michigan. The pertinent part of the opinion is as follows, l. c. 889:

> "It is next contended by defendants that the act was so amended during its passage through the Legislature as to contravene that part of section 22 of article 5 of the Constitution which provides that 'no bill shall be altered or amended on its passage through either house so as to change its original purpose.' In determining whether or not a bill has been 'altered or changed,' we are not limited by the title or contents of the bill as introduced into either branch of the Legislature, but to the title of the act which is being amended.
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> "In Westgate v. Township of Adrian, 161 Mich. 333, 126 N. W. 422, an original act (Act No. 145, Pub. Acts 1887) was amended by Act No. 71, Pub. Acts 1903. The objection was made that the amendment was unconstitutional, 'for the reason that the title to the act is not broad enough to cover the matter embraced in the amendment, and is therefore in violation of Section 20, art. 4 of the Constitution of 1850.' The court said:
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> "'This court has frequently held that, if the amendment might have been incorporated in the act under its original title, this

section is not violated. * * * It will be noted that the original title contains the word "regulate." Under that term, very broad powers may be exercised. It means both government and restriction. * * *

"'Any provisions germane to the subject expressed in the title may properly be included in the act, or added thereto by amendment. It is sufficient if the title fairly expresses the subject, or is sufficiently comprehensive to include the several provisions relating to or connected with that subject. Cooley, Const. Lim (6th Ed.) 172; People ex rel. Drake v. Mahaney, 13 Mich. 481; People v. Kelly, 99 Mich. 82, 57 N. W. 1090; Soukup v. Van Dyke, 109 Mich. 679, 67 N. W. 911; Fortin v. Electric Co., 154 Mich. 316, 117 N. W. 741. We think the title in question is clearly broad enough to comprehend the subject-matter of the amendment.'

"See, also Lundstrom v. Township of Ellsworth, 196 Mich. 502, 162 N. W. 990; Detroit International Bridge Co. v. American Seed Co., 249 Mich. 289, 228 N. W. 791; People v. Martin, 235 Mich. 206, 209 N. W. 87.

"The original act of 1851 was entitled as follows:

"'An Act to define the powers and duties of the boards of supervisors of the several counties, and to confer upon them certain local, administrative and legislative powers.' Pub. Acts 1851, No. 156.

> "It is contended by defendant that the act as introduced into the house merely contained provisions relative to the pay of supervisors and did not contain the provisions which deal with the duties of supervisors concerning contracts and provisions relative to holding other public offices. We are of the opinion that the provisions as are now found in the act are comprehended and included in the title of the original act. The amended act relates to the powers and duties of boards of supervisors and is not invalid upon that ground."

Following this opinion, we may refer to the Public Service Commission Act, as passed by the Fifty-Sixth General Assembly in Laws of Missouri, 1931, at page 304. The title to this Act is as follows:

> "AN ACT to repeal article 8 of chapter 33 of the Revised Statutes of Missouri, 1929, entitled 'Transportation of persons by motor vehicles,' and to enact in lieu thereof a new article containing seventeen sections, numbered 5264 to 5280, both inclusive, and to be known as article 8 of chapter 33, providing for the supervision, regulation and licensing of transportation of persons and property for hire over the public highways of the state of Missouri by motor vehicles; conferring jurisdiction upon the public service commission to license, regulate and supervise such transportation; providing for the enforcement of the provisions of this act and for the punishment for violation thereof."

Since the above title provides for the "supervision, regulation and licensing of transportation of persons and property * * * over the public highways of the state of Missouri by motor vehicles," that portion of House Bill 431 which is objected to by the protests of Senator Donnelly and Representative Lauf, which exempts certain motor vehicles from the operation of said laws, is unquestionably contained in said title.

That Missouri has clearly followed the above rule which incorporates the title of the original Act into the later law, is best expressed by the following quotation from Sherrill v. Brantley, 66 S. W. (2d) 529, 334 Mo. 497, l. c. 502:

> "It seems appropriate to note in this immediate connection, and before discussion of title is undertaken, that the title prefacing the amendatory act operated to substitute Section 16 thereof in the original act so as to constitute it a part of the latter and in lieu of former Section 16 repealed. The title of the original act became thereby the title of the later law and the constitutionality of the substituted section is to be determined upon whether it comes properly within the purview of this title. (State ex rel. v. Gideon, 277 Mo. 356, 210 S. W. 358.)"

The general rule that any subject not inconsistent with the title may be placed in the Bill by amendment is well stated in Harris v. State ex rel. Williams, 151 So. 858, l. c. 860, where, under Section 5, a long summary of authorities is given.

In State ex rel. v. Field, 119 Mo. 593, the Supreme Court en banc had under consideration the question of an amendment to the title of a bill made by the Senate after its passage in the House. In sustaining this amendment, the court stated, l. c. 608:

> "As to the proposition that, because its title was amended in the senate, it became a senate bill and must begin anew its course as an original bill, we think it is opposed to all parliamentary usage and could and would only tend to unnecessary and burdensome delays in legislation, prevent salutary amendments, and would in no sense aid in preventing the mischiefs contemplated by the makers of the constitution."

In view of the above authorities, we conclude that the amendment made by the Senate of the Sixty-First General Assembly to House Bill No. 431, in which the term "motor vehicles" was re-defined to exclude vehicles operating in interstate commerce wholly within border towns and suburban territory, is included in the purposes set out in the title to Article VIII, Chapter 35, Revised Statutes of Missouri, 1939, as found in Laws of Missouri, 1931, at page 304.

CONCLUSION.

It is therefore our opinion that no protest as contemplated by the Constitution was made to the signing, by the Speaker of the House and the President of the Senate, of House Bill 431, and that, absent such protest, calling attention to the fact that said bill was amended during its passage so as to change its original purpose, a presumption exists that such was not done, and that that presumption forecloses any investigation as to what occurred with reference to amending the bill in its passage.

However, assuming a valid protest was made to the signing of said bill it is the further opinion of this department that the Senate Amendment to House Bill 431, does not violate the provisions of Section 25 of Article IV of the Constitution of Missouri because when the title to said House Bill 431 is read, together with the title to Article 8, Chapter 35, Revised Statutes of Missouri for the year 1939, as found in Laws of Missouri, 1931, at page 304, it will be seen that the original purpose of said House Bill 431 has not been changed and does not therefore violate the above designated constitutional provision.

Respectfully submitted,

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APPROVED:

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