

LIEUTENANT GOVERNOR: Power of Lieutenant Governor to vote
SENATE: and debate in the Senate.

January 5, 1943

H onorable Frank G. Harris
Lieutenant Governor of Missouri
Jefferson City, Missouri



Dear Sir:

You have requested that we give our opinion on the following question: When or on what occasion may the Lieutenant Governor give a casting vote?

The consideration of this question requires a review from the beginning of this power of the Lieutenant Governor. The Journal of the Constitutional Convention of 1820 on page 20, shows that a draft of the constitution relating to the executive department was up for third reading. Section 17 was read as follows (p. 21):

"The lieutenant governor shall by virtue of his office, be president of the senate, have a right when in committee of the whole, to debate and vote on all subjects; and when the senate are equally divided, shall give the casting vote, and in all cases of joint vote of both houses of the general assembly, where there is an equal division, he shall in like manner give the casting vote."
(Underscoring Ours)

At this point the Journal shows:

"A motion was made by Mr. Ramsay, to strike out the words 'and vote,' which was negatived."

Thereupon the section as read was agreed to by a vote of 23 to 12. On page 39 of the Journal, the Section 17, supra, was then referred to as Section 15 and "amended by striking out the words 'and vote,' and the section as amended was agreed to."

The fire of 1837 destroyed all records of this State relative to this convention but there is, at present, in the Secretary of State's office, what purports to be a photostatic copy of the copy of the 1820 Missouri Constitution, filed in the Library of

Congress in Washington, D. C. That copy shows the final draft to which is appended the signatures of the members of the Convention, in so far as Section 17, supra, is concerned to be as follows:

"The lieutenant governor shall by virtue of his office, be president of the senate. In committee of the whole he may debate all questions; and when there is an equal division, he shall give the casting vote in the senate, and also in joint vote of both houses."

We are unable to ascertain how these changes occurred.

In the R. S. Mo., 1825 and on through R. S. Mo. 1855, this provision appears as follows:

"The lieutenant governor shall, by virtue of his office, be President of the Senate, In Committee of the Whole, he may debate all questions; and, when there is an equal division, he shall give the casting vote in the senate, and, also, in joint vote of both houses."

Note the difference in capitalization and punctuation.

There is no doubt about the meaning of the 1820 provision as taken from the Journal. Under that section, it is clear that the Lieutenant Governor was entitled (1) to debate all subjects when the Senate was resolved into a committee of the whole; (2) to give the casting vote when the Senate was equally divided (this power appears to be limited to being exercised at those times the Senate is not resolved into a committee of the whole, due to the fact that the power to vote in said committee was expressly stricken by the convention) and (3) to give the casting vote in joint sessions of both houses when there is an equal division.

The section as it appears in the copy of the 1820 Constitution on file in the Library of Congress, while stated more concisely, does not alter the clear meaning as expressed in the Journal of 1820. It is to be noted that, that part of this provision relating to giving the casting vote is set apart from the previous provision on debate by a semicolon. In *Mills v. State Board of Equalization* 33 P (2d) 563, 569, 570 the court had occasion to determine the office of a semicolon. It is said:

" * * * 'The comma and semicolon are both used for the same purpose, namely, to divide sentences and parts of sentences, the only difference being that the semicolon makes the division a little more pronounced than the comma.' * * * * *

"* * * * 'The Oxford Dictionary, after defining a semicolon, says that it is used for "marking off a series of sentences or clauses of coordinate value." Volume VIII, part II, p. 440. According to this statement of usage, every clause separated by a semicolon * * * is coordinate with each of the others, and therefore must each be read separately * * * * *"

* * * * *

"* * * * 'Agair, Ward's "Sentence and Theme" (Scott, Foresman and Co., 1923) at page 331, says the semicolon "shows that two sentences, each of which should stand alone, have been combined into one sentence;" and continues, "A semicolon is used to show that what follows is grammatically independent, though closely related in thought." * * *"

Applying these rules, it is apparent that the right to give the casting vote is not confined to a time when the Senate is in a committee of the whole, since the clause "and when there is an equal division, he shall give the casting vote in the Senate" being set off from that which precedes it by a semicolon, is to be read as a separate sentence, independent of the preceding clause.

As heretofore shown, the editions of the Constitution, as they are in R. S. No. 1825 through R. S. No. 1855, have not in punctuation and capitalization been the same in Section 15, Article IV as the copy filed in the Library of Congress. Since those changes have been unauthorized, we shall disregard them.

Out of the 1865 Constitutional Convention came a similar section. It was Section 13, Article V (G. S. 1865 p. 34) and read as follows:

"The lieutenant governor, by virtue of his office, shall be president of the senate. In committee of the whole he may debate on all questions; and when there is an equal division shall give the casting vote in the senate, and also in joint vote of both houses."

This has been compared with the original signed copy on file with the Secretary of State and found to be correct in all respects. Since it is identical in substance with the 1820 provision, we think it is to be given the same construction.

Out of the 1875 Constitutional Convention came a similar section. It was Section 15 Article V (R.S. No. 1939 p. 106c) and reads as follows:

"The Lieutenant-Governor shall possess the same qualifications as the Governor, and by virtue of his office shall be President of the Senate. In committee of the whole he may debate all questions, and when there is an equal division he shall give the casting vote in the Senate, and also in joint vote of both houses."

Note the absence of the semicolon after the word "questions." We have checked this absence with the original signed constitution, on file with the Secretary of State, as adopted from the 1875 Convention and find that that draft shows a semicolon after the word "questions." Also see Journal Missouri Constitutional Convention of 1875 (Loeb-Shoemaker) Vol. II page 794 where the version of Section 15, supra, that was adopted, is set forth with the semicolon after the word "questions" (See adoption pages 801, 802)

We therefore think that the same construction applies to the 1875 provision as we applied to the 1820 provision. This view is fortified by what has been said by writers on Parliamentary Law.

In Law and Practice of Legislative Assemblies (Cushing) Section 298, page 115, it is stated:

"* * * In the constitution of the United States and in those of all the States above named, except that of Virginia, (in which it is declared, that the lieutenant-governor shall preside in the senate but shall have no vote therein,) it is provided, that the presiding officer thereby designated shall give the casting vote, when the body over which he presides is equally divided; * * * * *"

Missouri is one of the States above named, to which the author refers. The author continues (p. 116):

"* * * This right of the lieutenant-governor is extended, * * * in Missouri to a joint vote of the two houses. * * * * *"

With reference to the functions of the Lieutenant Governor when the Senate is resolved into a committee of the whole, this author states (page 116):

"* * * In Connecticut and Missouri, the lieutenant-governor is permitted to debate, and in the States of Kentucky, Indiana, Illinois, and Texas, to debate and vote, when the body over which he presides is in committee of the whole. * * * * *"

Thus, this text bears out our view that the Lieutenant Governor in Missouri may debate when the Senate is in committee of the whole, but not vote; that he may vote during sessions of the Senate to give the casting vote in case of an equal division.

In Legislative Procedure (Luce) the author from page 432 to 445, discusses the presiding officer of the Senate and on page 445 concludes:

"In Connecticut, Kentucky, Mississippi, Indiana, Missouri, and Texas the Lieutenant-Governor may debate in Committee of the Whole."

Further discussing the power of Lieutenant Governor to vote, this author after discussing the origin of such powers, states (pages 447-448):

"The first of the State Constitutions to refer to the voting power of the presiding officer in the upper branch was that of New Jersey, which made the Governor the President of the Council, with a casting vote. New York was the first to find employment for a Lieutenant-Governor by making him President of the Senate; upon an equal division, he was to 'have a casting vote in their decisions, but not vote on any other occasion.' This was the only State with any such provision when the Federal Convention met, and so is to be credited with furnishing the idea to the Federal Constitution. The authors of that document preferred to give the voting power to the Vice-President by indirection, saying, he 'shall have no vote, unless they be equally divided.' Hamilton in No. 68 of 'The Federalist' gave as the reason for adopting the New York idea: 'To secure at all times the possibility of a definite resolution of the body, it is necessary that the President should have only a casting vote. And to take the Senator of any State from his seat as Senator, to place him in that of the President of the Senate, would be to exchange, in regard to the State from which he came, a constant for a contingent vote.'

"Kentucky was the next of the States to accept the principle. Her second Constitution (1799) made the Lieutenant-Governor the 'Speaker' of the Senate, with a casting vote, and went farther by empowering him, 'when in Committee of the Whole, to debate and vote on all subjects.' Indiana (1816), Mississippi (1817), and Illinois (1818), all copied this. Connecticut (1818) took it with the omission of the power to vote in Committee of the Whole. Missouri (1820) followed the Connecticut modification, and added a casting vote in joint votes of the two Houses. Other States have adopted the system until now, in the thirty-five States that have a Lieutenant-Governor, all but one (Massachusetts) make him the presiding officer of the Senate, and in each case it is specified that he is to have the casting vote or to vote when the Senate is equally divided,

except that in Michigan it is directed that he shall have no vote, and in Minnesota he is made 'ex officio President,' with nothing said about voting."

We think the foregoing disposes of the question, and conclude that in Missouri the Lieutenant Governor has the power to debate, but not vote, when the Senate is in committee of the whole; that he has the power to give the casting vote at sessions of the Senate (not in committee of the whole) where there is an equal division; that he has power to give the casting vote in joint sessions of the House and Senate when there is an equal division. "Casting vote" is defined in Laws and Practice of Legislative Assemblies (Cushing) page 119 Section 303 as follows:

"The casting vote is so called, not because on an equal division the question is decided by it, for, in fact, as we have seen, an equal division upon a question is a decision of it in the negative, but the question is then in such a position, that it is in the power of a single vote to decide the question either way, by being given on that side. Thus, if the votes are equal on each side, the affirmatives do not preponderate, and if there are no more votes to be given, the question must necessarily be held to be decided in the negative; but if there is another vote to be given, that vote must of course be a casting vote, because, on whichever side it is given, that becomes the preponderating side of the question. * * * *"

The above conclusion is subject to only one limitation and that is, the Lieutenant Governor cannot give a casting vote on final passage of bills or resolutions, to which the concurrence of both houses is necessary, and concurrence to amendments by one house as made by the other house. These limitations arise by force of Section 31 Article IV as follows:

"No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

And Section 14 Article V, as follows:

"Every resolution to which the concurrence of the Senate and House of Representatives may be necessary, except on questions of adjournment, of going into joint session, and of amending this Constitution, shall be presented to the Governor, and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill. Provided, That no resolution shall have the effect to repeal, extend, alter or amend any law."

This latter Section requires resolutions to which the concurrence of the Senate and House may be necessary, "shall be proceeded upon in the same manner as in the case of bills;" thus, according to Section 31, Article IV there must be, on final passage of resolutions of this kind and bills, a favorable vote of "a majority of the members elected to the house" and this excludes the Lieutenant Governor.

The last limitation noted, arises from the provisions of Section 32 Article IV, as follows:

"No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof; and reports of committees of conference shall be adopted in either house only by the vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting recorded upon the journal."

Hon. Frank G. Harris

-9-

January 5, 1943 .

This makes the same requirement as to the concurrence being by "a majority of the members elected thereto" and thus excludes the Lieutenant Governor.

Respectfully submitted

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

LLB:AM