GOVERNOR: Veto of Resolution No. 3 passed in Joint Session by Sixty-first General Assembly is a nullity.

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Honorable L. N. Searcy, Senator
Honorable W. B. Weakley
Honorable B. L. Cowherd
Honorable Roy Hamlin
Members of the House of Representatives
State Capitol
Jefferson City, Missouri

Gentlemen:

On January 10, 1941, the Senate and House convened in a joint session in the House of Representatives pursuant to the provisions of Section 3 of Article V. Among the proceedings was the passage of a resolution. (House Journal, page 37; Senate Journal, page 32). It was denominated "Joint Resolution No. 3". The resolution was adopted by a vote of - ayes 102, noes 63, absent 19, present but not voting, 1. (House Journal, page 44). After the passage of the resolution, the joint session dissolved.

On Wednesday, January 15, 1941, the Governor of the State of Missouri returned to the General Assembly in joint session a copy of the resolution showing his disapproval and in a special message cited Section 12 of Article V of the Constitution of Missouri as his authority therefor.

You submit, for an opinion, the following question, and have attached copies of the resolution and the Governor's special message:

> "Did Governor Stark under the powers of his office of governor of the State of Missouri have the constitutional authority to veto the resolution?"

I.

It is a rule of law that the veto power of the governor must be strictly construed. It was said in the case of Strong vs. People, 220 P. 999 (Colo.), l. c. 1002, concerning this power:

> "It can only be exercised when clearly authorized by a specific provision * * * * * * * * * * * * * * * * * * because, being a power in derogation of the general principle of the state government, the language conferring it must be strictly construed."

In arriving at a conclusion, it will be necessary to consider first, what is a joint resolution as contemplated by Article V, Section 12 of the Missouri Constitution? This provision of the Constitution is as follows:

> "The Governor shall consider all bills and joint resolutions, which, having been passed by both houses of the General Assembly, shall be presented to him. He shall, within ten days after the same shall have been presented to him, return to the house in which they respectively originated, all such bills and joint resolutions, with his approval indorsed thereon, or accompanied by his objections: Provided, That if the General Assembly shall finally adjourn within ten days after such presentation, the Governor may, within thirty days thereafter, return such bills and resolutions to the office of the Secretary of State, with his approval or reasons for disapproval."

The above provision authorizes the governor to approve or disapprove "joint resolutions * * * passed by both houses of the General Assembly." The use of the language "both houses of the General Assembly" means that a joint resolution must originate in one

or the other of the houses and be acted upon separately. Otherwise, no meaning can be attributed to the words "both houses." In the second sentence of said section, the governor is directed to return joint resolutions with his approval or disapproval to the "house in which they respectively originated." This conclusively shows that a joint resolution is one originating in one or the other of the houses. If it does not so originate, this provision of the Constitution has no meaning. The rule laid down in State ex rel. Crowe vs. Hostetter, 137 Mo. l. c. 646, is that "a construction of the Constitution which renders meaningless any of its provisions should not be adopted," and adhering to that rule we cannot apply a construction that renders meaningless the phrases "both houses" and "house in which they respectively originated."

Another provision which must be considered with Section 12, Article V, is Section 14, Article V, of the Missouri Constitution, which provides:

> "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."

It is to be noted that this section uses the language, that "every resolution to which the concurrence of the senate and house of representatives may be necessary." This broad language includes the joint resolutions mentioned in Article V, Section 12.

By this section, the framers of the Constitution excepted from the requirements of Article V, Section 12, all joint resolutions concerning adjournments, going into joint session and amending the Constitution, and further prescribed the procedure to be followed in passing a joint resolution.

The word "concurrence" as used in Section 14, when considered with Section 12, is to be given its ordinary and accepted meaning. It means, consent of the other house of the General Assembly. A resolution to which concurrence of the other house is necessary is a joint resolution within the meaning of Section 12, Article V.

In the decision of Oklahoma News Co. vs. Ryan, 224 P. 969 (Okla.), the same constitutional provisions as in Missouri were under consideration. The court defined a joint resolution as follows, l. c. 972:

> " * * * It further appears that the joint resolution contemplated was the joint act of both branches of the Legislature, being first agreed to in one branch and then sent to the other for its concurrence."

We next consider the question as to whether or not a joint resolution must be passed in the same manner as a legislative bill. It appears beyond controversy that Section 14 requires a joint resolution and a bill passed by the General Assembly to follow the same procedure so far as passage is concerned.

In the decision of State ex rel. Wilcox vs. Draper, 50 Mo. 24, l. c. 27, a joint resolution is regarded as a bill:

> "Whilst in American legislation a joint resolution regularly passed is regarded as a bill (Cush. Law and Practice in Legislative Assemblies, Sec. 2403), yet we willingly concede that a simple resolution passed by one house only cannot abrogate, modify or affect a general law."

The procedure relating to the enactment or passage of bills is contained in Article IV of the Constitution. Section 26 relates to the origin of bills and provides in substance that bills may originate in either house and

must be read on three different days in each house; section 27 provides that no bill shall be considered for final passage unless it has been reported on by a committee and printed for the use of the members; section 31 provides that no bill shall become a law on its final passage unless the vote is taken by yeas and nays, and a majority of the members elected to each house be recorded as voting in its favor. This means seventy-six votes in the House and eighteen votes in the Senate, voting separately - a constitutional majority. "Each house," as used in Section 31, refers to Section 1 of Article IV wherein the Constitution states the legislative power shall be vested in a senate and house of representatives, and also refers to Section 57 of Article IV wherein the Constitution declares "The legislative authority of the state shall be vested in a legislative assembly consisting of a senate and house of representatives * * * ."

The words "each house" as used in Section 31, due to the provisions of Sections 1 and 57, can mean nothing other than the two different branches of the Assembly must vote separately and not in joint session on bills, thus, clearly proving that bills cannot be enacted by the General Assembly while sitting in joint session.

After a bill is passed, certain procedure must be followed to make it a valid law. Section 37 of Article IV provides that after a bill has been voted upon and passed by each house of the General Assembly, it is to be signed by the presiding officer of each of the two houses; Section 38 requires the Secretary of the Senate, if the bill originated in that body, or the Chief Clerk of the House of Representatives, if the bill originated in that body, to present the same immediately to the Governor.

Having established that a joint resolution and a bill must be passed in the same manner, it follows that a joint resolution must originate in one of the houses, be referred to a committee, printed, read on three different days and adopted by a constitutional majority of that house, then be sent to the other house and follow the same procedure. Thereafter, a joint resolution must be signed by the presiding officer of each house; the procedure required by Section 29, Article IV (as amended, Laws 1933, page 479) followed and then be presented by the proper officer (Secretary of the Senate or Chief Clerk of the House of Representatives) of the house, in which it originated, to the governor.

Joint resolutions, passed in compliance with the procedure heretofore set out, must be presented to the Governor of Missouri.

Is Resolution No. 3 a joint resolution within the meaning of the Constitution?

Without considering the contents and the real purport of the resolution, we shall proceed to show the procedure followed in passing the resolution does not meet the constitutional requirements of a joint resolution. The resolution did not originate in one or the other of the houses; it was not referred to a committee and reported upon; it was not printed for the use of the members; it did not have a constitutional majority of each house voting separately in their individual branches, that is, it did not receive seventy-six votes of the members of the House sitting as the House of Representatives and eighteen votes of the members of the Senate sitting as the Senate; the provisions of Section 29, Article IV, as amended, were not followed; it was not signed by the presiding officer of each of the two houses in open session; and, not having originated in either house, it could not have been presented to the governor in person by the proper officer (Secretary of the Senate or Chief Clerk of the House of Representatives) of the house in which it originated.

The title calling the resolution a joint resolution does not make it such. The principle of law to be followed is that the substance and circumstances surrounding the passage of the resolution determines what it is. In City of Springfield to the use of McEvilly vs. Knott, 49 Mo. App. 612, the city council passed an act providing for the curbing and guttering of streets. This act was entitled a resolution. When attacked on the ground that it was not an ordinance, the court looked to the formalities followed in passing the same, and determined that it was an ordinance. In Kelley vs. Secretary of State, 112 N. W. 978 (Mich.), the state legislature passed an act entitled a resolution. When attacked because not a bill, the court looked to the substance and formalities observed in the passage and determined that it was a bill.

From the above and foregoing, we are of the opinion that the governor had no authority to disapprove or veto resolution No. 3, and his attempt in so doing constituted

unwarranted usurpation of power not vested in him by the Constitution, and is, therefore, a nullity.

II.

There is another reason that may be stated for holding the governor's purported veto of this resolution is a mere nullity in that his veto power extends only to resolutions that are legislative in character. In Richardson vs. Young, 125 S. W. 664 (Tenn.), the legislature had passed a joint resolution, that is, one originating in one house and going to the other. The purpose of this resolution was to fix a day certain for a meeting of both houses to elect certain state officers. The resolution was vetoed by the governor and thereafter the General Assembly, sitting in joint session, ignored the veto and proceeded to elect the officers. The right of one of those elected to hold office was challenged, and, in the opinion, the court, of necessity, had to determine the validity of the governor's veto. The Tennessee Constitution authorizing the governor to veto resolutions is similar to that of the State of Missouri, and is as follows:

> "Every joint resolution or order (except on questions of adjournment), shall likewise be presented to the Governor for his signature, and before it shall take effect shall receive his signature; and on being disapproved by him shall, in like manner, be returned with his objections; and the same, before it shall take effect, shall be repassed by a majority of all the members elected to both houses, in the manner and according to the rules prescribed in case of a bill."

The Court, in determining this question, said, l. c. 678:

> "But the joint resolution was not one which article 2, section 18, of the

Constitution requires to be presented to the executive, and which cannot become effective without his approval, or adoption notwithstanding his veto. That provision only concerns resolutions, or orders, which are legislative in their character, and does not relate to those in regard to mere matters of formal procedure, of which the Senate and House have exclusive control. There seems to be no conflict of authorities as to this.

"The Constitution of the United States (article 1, section 7) provides that 'every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment), shall be presented to the President of the United States, and before the same shall take effect shall be approved by him or, being disapproved by him, shall be passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill,' which, while very similar to section 18 of article 2 of the Constitution of this state, is broader, in that the requirement covers, not only every resolution and order, but every vote to which the concurrence of the Senate and House of Representatives are necessary.

"This provision has always been construed to include only resolutions which are legislative in their character, and it has never been the practice of the Congress of the United States to present to the President for his approval concurrent resolutions, orders, or votes in regard to matters not legislative.

"The question first arose in 1798, when the concurrent resolution submitted the Eleventh Amendment of the Constitution

of the United States to the several states for adoption was challenged, because not presented to the President, as supposed to have been required by article 1, section 7, of the Constitution, and it was held that the negative of the President was confined to ordinary cases of legislation, and that he had nothing to do with a resolution of that kind. Hollingsworth v. Virginia, 3 Dall. 381, 1 L. Ed. 644.

"The subject of joint and concurrent resolutions was considered in a report of the judiciary committee of the Senate of the United States, submitted and adopted January 27, 1897, in which it is said:

"'We conclude this branch of the subject by deciding the general question submitted to us, to wit, "whether concurrent resolutions are required to be submitted to the President of the United States," must depend, not upon their form, but upon the fact whether they contain matter which is properly to be regarded as legislative in its character and effect. If they do so, they must be presented for his approval; otherwise, they need not be. In other words, we hold that the clause in the Constitution which declares that every order, resolution, or vote must be presented to the President to "which the concurrence of the Senate and House of Representatives may be necessary," refers to the necessity occasioned by the requirement of the other provisions of the Constitution, whereby every exercise of "legislative powers" involves the concurrence of the two houses; and every resolution not so requiring such concurrent action, to wit, not involving the exercise of legislative powers, need not be presented to the President. In brief, the nature or substance of the resolution, and not its

> form, controls the question of its disposition.' 4 Hinds' precedents of the House of Representatives, Section 3482-3483."

The above case is authority that the governor of Missouri does not have power to veto any resolution that is not legislative in character.

We proceed to analyze joint resolution No. 3 to determine whether it is legislative in character. Both branches of the General Assembly assembled in the House of Representatives to receive the returns of the general election held on November 5, 1940, in compliance with the provisions of Article V, Section 3, and in connection therewith resolution No. 3 was adopted. We believe that resolution No. 3 is nothing more than a motion reduced to writing, passed by the General Assembly as an expression of its wishes to investigate the results of the election in the race for governor.

We are of the opinion that the resolution is not legislative in character because it purports only to prescribe a course of action for the General Assembly as a single body, in nowise pertaining to a legislative matter - in other words, an internal function. In order for a resolution to be legislative in character, it must lay down a rule of action for some person or group other than the General Assembly. That this is true is to be seen from the holding in Richardson vs. Young, supra, wherein it was held a resolution prescribing a course of action for the General Assembly, that it would meet at a certain date to elect certain officers was not legislative in character.

We have considered this latter proposition that the governor does not have authority to approve or disapprove a resolution that is not legislative in character solely for the purpose of illustrating what may be the rule in this state. We do not place the conclusion reached in this opinion upon that basis since we do not think it is the function of the attorney general to determine such a grave question, that of reading into the constitution a new exception, that joint resolutions not legislative in character are not subject to approval by the governor when that question is not presented.

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We note that the resolution did not receive a constitutional majority of the Senate and House of Representatives voting separately as such. The validity of the resolution did not depend upon obtaining a constitutional majority of each house voting separately. It was necessary to obtain only a majority of votes of the members of both houses, that is, ninety-three or more of the one hundred and eighty-four votes.

In our analysis of Resolution No. 3, we have observed it indicates the legislature's intention to appropriate funds of the State Treasury to pay expenses of the investigation of the election for Governor.

Section 43 of Article IV of the Constitution of Missouri provides:

> " * * * the General Assembly shall have no power * * * to permit money to be drawn from the treasury, except in pursuance of regular appropriations made by law."

One employing only plain and honest reasoning would know the Governor's veto of Resolution No. 3 was a nullity, and would know also that no money can be drawn from the state treasury and expended for any purpose whatsoever except by the passage of an appropriation bill by the Senate and House of Representatives, and approved by the Governor.

Yours respectfully,

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Attorney General

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