

LEGISLATURE:

Election of officers at an
extra session.

September 26, 1933



Mrs. Grace Shay
Chief Stenographer
57th General Assembly
Montgomery City, Missouri

Dear Mrs. Shay:

This Department acknowledges receipt of your letter of September 12, requesting an opinion regarding the elective officers of the House of Representatives and Senate in the event an extra session is called by the Governor. Your letter is as follows:

"I am writing for information regarding an extra session of Legislature should there be one.

Will the elective officers of the regular session be called back to act or will new ones be elected? Who notifies the officers at that time?

I will appreciate and thank you very much for this information."

Authority for the Governor to call an extra session is found in Section 9, Article V, page 101 Constitution of Missouri, which is as follows:

"The Governor shall, from time to time, give to the General Assembly information relative to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary

occasions he may convene the General Assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary."

The limitation of matters which can be considered by an extra session is Section 55, of Article IV, page 98 of the Constitution of Missouri, which is as follows:

"The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specifically designated in the proclamation by which the session is called, or recommended by special message to its consideration by the Governor after it shall have been convened."

The Constitution makes no distinction between an extra session, a called session, or a regular session of the Legislature insofar as the election of officers is concerned, and places the matter wholly within the two legislative branches as set forth in Section 17 of Article IV, page 83 of the Constitution of Missouri, said section being as follows:

"Each house shall appoint its own officers; shall be sole judge of the qualifications, election and returns of its own members; may determine the rules of its own proceedings, except as herein provided; may arrest and punish by fine not exceeding three hundred dollars, or imprisonment in a county jail not exceeding ten days, or both, any person, not a member, who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence during its session may punish its members for disorderly conduct, and, with the concurrence of two-thirds of all members elect, may expel a member; but no member shall be expelled a second time for the same cause."

In the absence of any direct law bearing upon the question of the election of officers we shall consider precedent. In 1921 there were two extra sessions of the Legislature. In the first extra session the following proceedings were had relating to the election of officers in the Senate:

"The Senate was called to order by the Honorable Hiram Lloyd, Lieut. Governor and President of the Senate. The President announced the following temporary officers: (names listed)

On p. 1200, the following proceedings were had:

Senator Anderson of St. Louis offered the following resolution, which was read and adopted:

'RESOLVED, that the following officers of the Senate in the Regular Session of the 51st General Assembly be declared officers of the Extra Session, to-wit:'

And again on p. 1201 the following proceedings were had:

Senator Seneker offered the following resolution, which was read and adopted:

'RESOLVED, That the Secretary of the Senate inform the House of Representatives that the Senate is now organized in pursuance to the proclamation of the Governor and ready for business by the election of the following officers:'

And the following in the House:

" HOUSE JOURNAL, 51st GENERAL ASSEMBLY,
Vol. II. p. 1535.

Tuesday, June 14, 1921.

The following proceedings were had:
The House was called to order by Speaker O'Fallon, and the following proceedings were had (p. 1536):

Mr. Morgan offered the following resolution, which was read and adopted:

'BE IT RESOLVED that the House of Representatives of the 51st General Assembly of Missouri now here in extra session convened be, and the same is, hereby organized by the selection of the same officers had during the regular session of the 51st General Assembly with the exception of Chief Clerk, Reading Clerk and Chief Enrolling Clerk;

BE IT FURTHER RESOLVED that the Chief Engrossing Clerk exercise the function of the Chief Enrolling Clerk in addition to the duties of Engrossing Clerk.
* * * * *

On the same page (1536) Mr. Morgan offered the following resolution, which was read and adopted:

'BE IT RESOLVED that the Assistant Chief Clerk inform the Senate that the House is duly convened, is now in session, and ready for consideration of business, with the following elected officers:'

In the second extra session the following proceedings were had in the Senate:

"SENATE JOURNAL, VOLUME II, p. 1561.
First day of Second Extra Session
Thursday, Nov. 3, 1921.

The following proceedings were had:

Pursuant to a proclamation by the Governor, the Senate was reconvened in extra session, Lieut. Governor Lloyd, President of the Senate, in the chair. The President announced the following temporary officers:

And again, on the same page, the following proceedings were had:

Senator Pickett offered the following resolution, which was read and adopted:

'BE IT RESOLVED that the following officers be declared the officers of the Senate of the Special Session of the 51st General Assembly: '

And on p. 1563, the following resolution was offered by Senator Irwin, which was read and adopted:

'RESOLVED, that the Secretary of the Senate inform the House of Representatives that the Senate is now organized in pursuance to the proclamation of the Governor and ready for business by the election of the following officers: ' . "

And the following proceedings were had in the House:

"On p. 1962 of the same volume, same being the first day, Thursday, November 3, 1921, of the second extra session, the following proceedings were had:

Mr. Morgan offered the following resolution, which was read and adopted:

'BE IT RESOLVED that the following persons constitute the officers of the Second Extra Session and that they serve in their capacities indicated:

S. F. O'Fallon, Speaker
George Rigel, Speaker Pro Tem, etc.

AND BE IT FURTHER RESOLVED, that the Chief Clerk appoint four competent clerks to assist him in his duties; that the Engrossing Clerk appoint two competent clerks to assist him; That the doorkeeper appoint 9 competent persons to assist him.*****'

And again on p. 1963, Mr. Morgan offered the following resolution, which was read and adopted:

'BE IT RESOLVED that the Chief Clerk inform the Senate that the House of Representatives is now organized with the following officers:

S. F. O'Fallon, Speaker,
George Eigel, Speaker Pro Tem, etc.' "

We next refer to the call session of the 21st General Assembly in 1861. The following proceedings were had in the Senate:

"On motion of Mr. Johnson it was resolved that the Secretary, Assistant Secretary, Enrolling Clerk, Doorkeeper, Sergeant at Arms and standing committees of the last session without further election or appointment.

On motion of Mr. Parsons, the vote agreeing to the resolution was reconsidered. Then Mr. Parsons moved to amend the resolution by striking out all after the word 'resolved' and inserting in lieu thereof the following:

'That the Senate do now proceed to the election of a Secretary, Assistant Secretary, Enrolling Clerk, Engrossing Clerk, Doorkeeper, and Sergeant at Arms in the order herein stated.'

which amendment was read and agreed to by the following vote: (vote listed)

The Aye's and No's having been demanded by Mr. Johnson. The question then being on agreeing to the resolution, it was then agreed to."

All officers to the individual offices were then elected according to the records.

And the following in the House:

"A quorum being present, Mr. Vest offered the following preamble and resolution:

'WHEREAS, we believe that the adjournment sine die of the 21st General Assembly of the State of Missouri on the 28th day of March last was a virtual dissolution of the organization thereof; and

THEREFORE BE IT RESOLVED, that the House of Representatives now proceed to the election of a Speaker, Chief Clerk, Assistant Clerk, Enrolling and Engrossing Clerk, Door Keeper, and Sergeant at Arms in the order in which they are named in this resolution.'

Further, the question then being on agreeing to the first part of the resolution offered by Mr. Vest in relation to the election of Speaker, it was decided in the affirmative by the following vote: (vote listed)

Aye's and No's having been demanded by Mr. Riley."

The House of Representatives then proceeded to elect all of the above mentioned officers.

We offer the above precedents showing that the extra sessions in the past have elected officers and in most instances the same officers who presided over the regular session. You will further note in each instance that the Legislature treated it as an election of officers. A precedent of many years evolves itself into a custom and becomes law, as is defined in 17 C. J. page 446, as follows:

"In its more technical legal sense, a custom is a usage which has obtained the force of law. In other words, it is a law established by long usage. *****"

In the case of Thompson v. Musser, 1. Pa. 464, the Court in determining this question said:

"Although the practice of the courts, or forms of pleadings, which pass sub silentio, do not make the law, yet a constant practice of permitting acts of assembly, or laws, to be read out of printed books, without opposition, is a great evidence of the law."

It is the opinion of this Department that when the 57th General Assembly of 1933 adjourned April 25, 1933, sine die, it was the dissolution of that organization, and that in the event the

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Governor exercises his power and calls an extra session it will be necessary to re-elect the officers who presided over the 57th General Assembly or to elect officers in their places.

Referring to your question as to who notifies the officers, it is the opinion of this Department that if you were chief stenographer in the regular session of the 57th General Assembly, and desire to serve again it will be necessary for you to follow the same routine that you did to obtain that office in the regular session.

Yours very truly,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

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