CONSTITUTIONAL LAW: House Bills No. 29 and No. 398 are constitutional as their titles are valid.

STATUTES:

June 29, 1951

6-30-51

FILED
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Honorable Forrest Smith
Governor of the State of Missouri
Capitol Building
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent letter requesting an official opinion as to the constitutionality of House Bills No. 29 and No. 398 recently passed by the 66th General Assembly. This letter reads in part as follows:

> "House Bills Nos. 29 and 398, Truly Agreed To copies of which are attached for your convenience, have been regularly passed by the General Assembly and delivered to me.
>
> "In checking through these bills preparatory to executive action, I note that their titles state that they are amendatory of designated statutes; and that they purport to amend these statutes by, (1) in the case of House Bill 29, adding to said section a subsection, and (2) in the case of House Bill 398 adding designated words to the end of the section. The title of House Bill 398 does not, however, indicate that the words 'the actuary engaged by' are to be inserted in Line 2 of Section 86.593 set forth as amended, nor does the title of House Bill 29 indicate that the word 'for' is to be changed to the word 'from' in Line 1 of Section 86.063 and amended.
>
> "Will you please render your official opinion as to the constitutionality of the titles of these bills? * * *"

Section 23 of Article III, Constitution of Missouri, 1945, provides:

> "No bill shall contain more than one subject which shall be clearly expressed in its title,

> except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated."

This Section was formerly Section 28 of Article IV, Constitution of Missouri, 1875, and has been changed in form but not in substance. The purpose of this section is stated by the Supreme Court of the State of Missouri in the case of State ex rel. v. Wiethampt, 133 S.W. 329, l.c. 331, 231 Mo. 449:

> "Section 28, article 4, of the Constitution is: 'No bill (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated, and except bills passed under the third subdivision of section forty-four of this article) shall contain more than one subject, which shall be clearly expressed in its title.'
>
> "There can be no doubt of the purpose of that clause in our Constitution or of its wisdom. If the design of the promoters of this act was, as is charged, to mislead the public and the members of the General Assembly as to its object or to prevent a careful consideration of the bill before its enactment into a statute, or, whether so designed by its promoters or not, if such was its effect, it falls within the constitutional limitation above quoted. In Cooley on Const. Lim. (7 Ed.) p. 205, it is said: 'It may therefore be assumed as settled that the purpose of these provisions was, first to prevent hodge-podge or "log-rolling" legislation; second, to prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and, third, to fairly apprise the people, through such publication of legislative proceedings as isusually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they shall so desire.'

> "This court has said: 'The evident object of the provision of the organic law relative to the title of an act was to have the title, like a guide-board, indicate the general contents of the bill, and contain but one general subject which might be expressed in a few or a greater number of words. If those words only constitute one general subject; if they do not mislead as to what the bill contains; if they are not designed as a cover to vicious and incongruous legislation, then the title can stand on its own merits, is an honest title, and does not impinge on constitutional prohibitions.' (St. Louis v. Weitzel, 130 Mo. 600, l.c. 616.)"

The title to House Bill No. 29 reads as follows:

> "To amend section 86.063, RSMo 1949, relating to police retirement systems in cities of five hundred thousand inhabitants or more, by adding to said section a subdivision (4)."

In the body of the bill, subdivision (4) was added. However, in addition thereto, the word "for" was changed to "from" in the first sentence of Section 86.063, when then read:

> "Upon retirement <u>from</u> service a member shall receive a service retirement allowance which shall consist of:"

The question therefore is whether or not this change of the word "for" to "from" without specific reference thereto would render the bill unconstitutional under Section 23 of Article III as not having its subject clearly expressed in its title.

It is a well established principle of law that the title to an amendatory act may refer merely by section to the statute to be amended, if the subject of both be the same; State v. Spears, 213 S.W. 2d. 210, 358 Mo. 23. However, in addition to the title of House Bill No. 29 referring to the section number to be amended, it also specifically states in what manner it is to be amended, to-wit, "by adding to said section a subsection (4)." This has the effect of stating in the title in less comprehensive terms the subject of the amendment. The law with regard to such situations is reviewed and stated in the case of Graves v. Purcell,

85 S.W. (2d) 543, l.c. 548, 337 Mo. 574 as follows:

> "* * *We must determine the effect of the particulars set forth in the light of the cardinal principle before stated that the purpose of section 28 of article 4 of our Constitution is to limit the subject-matter of the bill to one general subject and to afford reasonably definite information to the members of the General Assembly and the public as to the subject-matter dealt with by the bill. Where the title to a bill contains comprehensive language followed by particulars of less comprehensive scope, there can be no question that as to all details within the scope of the narrower language employed the provisions of the bill must be confined to the limits of the narrower language contained in the title. State ex rel. v. Hackmann, 292 Mo. 27, 237 S.W. 742; State v. Crites, 277 Mo. 194, 209 S.W. 863. In some instances the particulars set forth in the title expressly or by necessary implication restrict the meaning and scope of more comprehensive language contained in the title, and in such instances it is clear both upon principle and authority that the provisions of the bill must be confined within the limits of the particulars specified. State ex rel. v. Hackmann, supra; Vice v. Kirksville, 280 Mo. 348, 217 S. W. 77; Woodward Hardware Co. v. Fisher, 269 Mo. 271, 190 S.W. 576. But in instances where the title to the bill descends into particulars which are neither expressly nor by necessary implication restrictive of the general purpose of the bill as set forth in its title, but are merely descriptive of some of the instrumentalities or means to be employed in effectuating the general purpose of the bill as declared in its title, there is no constitutional barrier to the inclusion in the bill of provisions which are germane to and within the scope of the general purpose of the bill as declared in its title and which, although not set forth in the

> particulars expressed in the title, are not out of harmony with them. State ex rel. v. Buckner, 308 Mo. 390, 272 S.W. 940; State ex rel. v. Terte, 324 Mo. 402, 23 S.W. (2d) 120; State ex rel. v. Williams, 232 Mo. 56, 133 S.W. 1; State ex rel. v. Miller, 100 Mo. 439, 13 S.W. 677. * * *"

However, in further consideration of this question, it must be remembered that there is a presumption of the constitutionality of an act of the legislature, and that Section 23 of Article III of the Constitution is to be construed liberally and that undue subtleties and refinements are not to be resorted to in order to nullify legislative action. The court further states in Graves v. Purcell, supra, at l.c. 548, 549, that:

> "* * *Before proceeding to the consideration of the specific reasons urged in support of the contention that the statute here in question violates the provisions of section 28 of article 4 of the Constitution, we deem it appropriate to advert to certain fundamental principles which must be applied by us in properly determining the controverted issue. There is a presumption that the statute here assailed is constitutional. The burden rests upon the party questioning the constitutional validity of a statute to establish its unconstitutionality beyond a reasonable doubt, and if its constitutionality remains in doubt, such doubt must be resolved in favor of its validity. State ex rel. v. Terte, 324 Mo. 402, 23 S.W. (2d) 120; Forgrave v. Buchanan County, 282 Mo. 599, 222 S.W. 755. This court has long been committed to the principle that section 28 of article 4 of our Constitution must be liberally construed. State ex rel. v. Buckner, 308 Mo. 390, 272 S.W. 940; State v. Mullinix, 301 Mo. 385, 257 S.W. 121. A liberal construction of the constitutional provision in question requires that such construction be fair, reasonable, and rational, to the end that legislative action shall not be thwarted and nullified by the courts by a resort to undue subtleties and refinements or extreme and artificial formalism."

In the case of State v. Thomas, 256 S.W. 1028, l.c. 1030, 301 Mo. 603, we find the following:

> "It is contended in addition, however, that this act is violative of section 28 of article 4 of the Constitution, in that it contains more than one subject which is not clearly expressed in its title. In the discussion of this contention the salutary and well-established rules of construction concerning the sufficiency of titles under the Constitution should be kept in view, and under all reasonable circumstances the validity of legislative action upheld if it is possible to do so without doing violence to the language employed and the meaning evidently thereby intended to be conveyed. While it has been frequently held that the constitutional section, under review, is mandatory, it is likewise held that a title should be liberally construed in support of the power sought to be exercised by the Legislature. * * *"

In view of the foregoing, it is our opinion House Bill No. 29 is valid and that Section 23 of Article III of the Constitution is not applicable in this instance. The purpose of this constitutional provision is by no means offended as it cannot possibly be said that anyone was misled by the title of this bill when the word "for" was changed to "from" in the body of said bill. Furthermore, the constitutionality of the act is to be presumed and effect given thereto if possible. And too, we fail to see where the substance of the section has been changed except as stated in the title, the restriction of which would not be such as to require holding the Act invalid.

II.

The title to House Bill No. 398 reads as follows:

> "To amend Section 86.593 of the Revised Statutes of Missouri, 1949, relating to the Firemen's Retirement System in cities of 500,000 or more inhabitants, by adding, at the end of the Section the words, 'The Board of Trustees at its discretion may change such rate in any year, provided the rate fixed for any year shall not be less than the level rate required to amortize the then remaining accrued liability within forty years from the effective date of the System.'"

Here again, in addition to the change expressly stated in the title to the bill, there was inserted in the first sentence of the Section 86.593 as amended the words, "the actuary engaged by." Section 86.593, as amended by the bill, then reads in part:

> "Immediately succeeding the first valuation the actuary engaged by the Board of Trustees shall compute the rate per cent of the total earnable compensation of all members * * *."

It would appear that the principles set forth in the case of Graves v. Purcell, supra, would be controlling. The effect of the addition of the words, "the actuary engaged by," would be to authorize the Board of Trustees to engage an actuary to assist them to carry out their duties. The granting of such authority is clearly not expressly included in the restrictive language of the title of House Bill No. 398.

However, we find that Section 86.500, RSMo. 1949, which relates to the Firemen's Retirement System in cities of 500,000 or more inhabitants, already gives the Board of Trustees the authority to engage an actuary to assist them in the discharge of their duties. Section 86.500 reads in part:

> "The board of trustees shall elect from its membership a chairman and shall by majority vote of its members appoint a secretary who may be but need not be one of its members. It may engage such actuarial and other services as may be required to transact the business of the retirement system. * * *"

We therefore see that the addition of these words to the amended section add nothing whatsoever to the powers and duties exercised by the Board of Trustees and that their inclusion in the amended section is of no legal effect. In view of this, we feel that their inclusion is to be treated in the same way as House Bill No. 29 was treated above. It cannot be said that anyone was misled by the title of House Bill No. 398. There is a presumption of constitutionality of this bill and effect is to be given thereto if possible. The addition of the words are of no legal effect. We therefore feel that Section 23 of Article III of the Constitution is not applicable and that said bill is constitutional.

Honorable Forrest Smith

CONCLUSION

It is therefore the opinion of this department that House Bills No. 29 and No. 398 of the 66th General Assembly are valid enactments and are not unconstitutional under Section 23 of Article III, Constitution of Missouri, 1945.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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