CONSTITUTION: Requirement of title.
LEGISLATURE:

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Honorable Charles A. Witte
House of Representatives
Jefferson City, Missouri

Dear Mr. Witte:

This acknowledges your request, which is as follows:

> "I am hereby requesting an opinion on the validity of the bill having been offered and passed with an emergency clause shown in the body of the bill but not shown in the title of the said bill."

Your inquiry evidently is directed toward the validity or invalidity of the emergency clause where the bill, as finally passed, carries an emergency clause but the title does not mention or include the emergency clause. The 1945 Constitution of Missouri, Section 23 of Article III, 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."

Section 28, Article IV of the 1875 Constitution, provides:

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

Section 29, Article III of the 1945 Constitution, defining when laws become effective, provides as follows:

> "No law passed by the general assembly shall take effect until ninety days after the adjournment of the session at which it was enacted, except an appropriation act or in case of an emergency which must be expressed in the preamble or in the body of the act, the general assembly shall otherwise direct by a two-thirds vote of the members elected to each house, taken by yeas and nays; provided, if the general assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess."

The 1875 Constitution, Section 36, Article IV, provided:

> "No law passed by the General assembly * * * * shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct: * * * *"

We do not find where the exact question you ask has been passed on by the Supreme Court of this state, however many cases are reported in which the validity of the law is attacked on the ground that the title is defective. Those cases arose during the time the 1875 Constitution was the organic law, but as substantially the same provision is contained in Section 23, Article III of the 1945 Constitution, as is contained in Section 28, Article IV of the 1875 Constitution, with reference to the title, the construction of the 1875 Constitution on that subject would seem to control the construction of substantially the same provision in the 1945 Constitution, found in Section 23, Article III thereof.

The Supreme Court of this state in many cases has announced that the title section of the Constitution shall be liberally construed. The object and purpose of the constitutional provision being to require that the title to the bill shall be of assistance to the members of the Legislature in determining their action on the bill in question. The title must not be confusing, nor shall it contain more than one subject matter, and any effective part thereof must be germane to the subject matter dealt with in the body of the bill. The title need not be necessarily tedious or prolix, but it must be a true and certain guidepost indicating what the body of the bill is about. Cases throwing light on the meaning of the above constitutional limitation contained in Section 23, supra, are mentioned here below.

In the case of St. Francis Levee District v. Dorroh, reported in 316 Mo. 398, l.c. 413, the opinion recites as follows:

> " * * * * It is urged that the bill or statute here in question contains more than one subject and that the subject-matter of the bill is not clearly expressed in its title; that no mention is made in the title of said bill as to penalties, fines, or interest for non-payment of levee taxes. The section (Sec. 4618, R.S. 1919) of the statute prescribing the penalty is a part of a bill enacted by the Legislature at the regular session of 1913 (Laws 1913, p. 290 et seq.), the title of which bill reads: 'An act to repeal article 9 (entitled "Organization of levee districts by circuit courts") of Chapter 41 (entitled "Drains and levees") of the Revised Statutes of Missouri of 1909, and to repeal an act amending and adding to said article 9, enacted in 1911 and found on pages 231 and 239, inclusive, of the Laws of Missouri of 1911, and all sections therein by whatever designation, and to enact a new act in lieu thereof, to be known as article 9 (pertaining to the organization of levee districts by circuit courts) of said chapter 41, with an emergency clause.'
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> "In State v. Mullinix, 301 Mo. 385, an act, the title of which was equally as general as that of the act now under

review, was ruled not to be violative of the constitutional requirement above cited. In that case, we said: 'The generality of a title will not affect its validity where it does not tend to cover up or obscure legislation which is in itself incongruous. A requisite to congruity is that the amendatory act shall pertain to and admit of being made a consistent part of the law to be amended. The disposition of the courts has always been to avoid thwarting the efficiency or evident salutary effect of legislative action by a liberal interpretation of the constitutional provision. (Burge v. Railroad, 244 Mo. 76; Booth v. Scott, 205 S.W. (Mo.) 633.) With this end in view it has frequently been held that a numerical reference, as in the case at bar, to the section sought to be amended without a statement of the subject-matter of the amendatory act, is a sufficient title to an act which deals exclusively with the subject of the section to be amended. The following cases are illustrative of this ruling: State ex rel. v. County Court, 128 Mo. 440; State ex rel. v. Meege, 135 Mo. 112; State ex inf. Madley v. Herring, 208 Mo. l.c. 722; State v. Murray, 237 Mo. l.c. 166; State ex rel. v. Imel, 242 Mo. l.c. 303; State v. Melton, 255 Mo. l.c. 180; Ex parte Hutchens, 246 S.W. (Mo.) l.c. 188; Asel v. Jefferson City, 287 Mo. l.c. 204; McCue v. Peery, 293 Mo. l.c. 234.'

"In State ex rel. v. Roach, 258 Mo. l.c. 558, we said, en Banc: 'If we are not to offend by muddy prolixity, it would seem that when the general purpose of an act is clearly set forth in its title, then all ancillary matters, germane to and not inconsistent with the general purpose and which are necessary, or necessary details, in order to carry out and give life and effect to such purpose, and without which its purpose would fail, are to be read by necessary implication into the title of the act.'

"In Ferguson v. Gentry, 206 Mo. l.c. 198, we said: 'We do not underrate the importance of this clause of our Constitution; its purpose is unmistakable and its tone is mandatory, but it must not be given a construction which would hamper the Legislature in a faithful and intelligent effort to embrace in one act a subject containing different features but all pertaining to the same legislative purpose. (State v. Doerring, 194 Mo. 410.)'

The title of the act in question clearly indicates that the general purpose of the act is to repeal Article 9 of Chapter 41 of the Revised Statutes of 1909, pertaining to the organization of levee districts by circuit courts, and an act of 1911 amendatory of said article, and to enact a new act in lieu thereof, to be known as Article 9 of said Chapter 41. The subject of the act, in our opinion, is single, and, while the title is general in expressing the purpose of the act, it cannot be said to be misleading, and it would appear, from a reading of the act in its entirety, that the section imposing a penalty for non-payment of levee taxes when due is ancillary, germane to, and not inconsistent with, the single subject and general purpose of the act, which is to provide a comprehensive law respecting the organization, support and maintenance of levee districts organized by circuit courts."

In State v. Mullinix, 301 Mo. 385, it was held that the title was sufficiently comprehensive to authorize the insertion in the body of the act of a section making it unlawful to "possess" intoxicating liquors, although the word "possess" does not expressly appear in the title of the act of 1921 or in the title of the act which it attempts to amend. The Supreme Court, speaking of the meaning of the above title section of the Constitution, said at l.c. 389:

" * * * * The meaning of the provision, often repeated, is, that a title is suf-

ficient which indicates in a general way the contents of the act. (State ex rel. v. Roach, 258 Mo. 541; State v. Hurley, 258 Mo. 275.) A constitutional restriction upon legislative action similar in its material features to that under review is found in the Constitution of 1865 (Art. 4, Sec. 32). The rule of construction referred to was held applicable to this section. There has been no variance from this ruling in construing the like provision in the present Constitution. (Ensworth v. Albin, 46 Mo. 450; In re Burris, 66 Mo. 442; State v. Brassfield, 81 Mo. 151; Lynch v. Murphy, 119 Mo. 163; State v. Cantwell, 179 Mo. 245; State v. Doerring, 194 Mo. 398; State v. Wortman, 213 Mo. 131; State ex rel. v. Vandiver, 222 Mo. 206; Asel v. Jefferson City, 287 Mo. 195; Ex parte Karnstrom, 249 S.W. 595.)

"The generality of a title will not affect its validity where it does not tend to cover up or obscure legislation which is in itself incongruous. A requisite to congruity is that the amendatory act shall pertain to and admit of being made a consistent part of the law to be amended. The disposition of the courts has always been to avoid thwarting the efficiency or evident salutary effect of legislative action by a liberal interpretation of the constitutional provision. * * * *"

In State ex rel. Sekyra v. Schmoll, 313 Mo. 693, the Supreme Court, en banc, construed the same section and upheld the validity of the bill where the title to the same stated that it was an act to repeal three named sections of the Revised Statutes relating to public notices and advertisements in cities of more than 100,000 inhabitants and to enact in lieu thereof three new sections relating to the same subject, notwithstanding the charge that it was defective and failing to say that the act repealed the law relating to publications in cities of more than 600,000 population. One of the three sections repealed related to publication contracts in cities having 600,000 inhabitants or more. The court, at l.c. 706, said:

> "The one subject here relates to legal publications in cities of over 100,000, and the statute repealed relates to that. The Constitution does not require each subdivision of the subject and details germane to the general purpose of the act to be mentioned in the title. (State ex rel. Greene Co. v. Gideon, 277 Mo. 361.) When certain sections of the statute are repealed and other sections enacted in lieu thereof, we do not understand that the Constitution is violated if the new section fails to deal with all the matter contained in the law repealed. If there is included a different matter not in the law repealed, there might be some ground for the objection."

In State ex rel. Faust v. Thomas, 313 Mo. 160, the title was held good, and the court said at l.c. 166:

> "The title to which this objection is made is as follows:
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> "'An act to repeal Section 5089 of Article 15 of Chapter 30 of the Revised Statutes of Missouri, 1919, relating to registration in cities with 25,000 and less than 100,000 inhabitants, and enacting in lieu thereof a new section relating to the same subject-matter, to be known as Section 5089.'
>
> "We have often held that the foregoing constitutional provision in regard to titles of legislative enactments should be wisely and liberally construed so as to not thwart the efficiency of salutary legislation. The nature of the constitutional provision being thus understood, unless the title to the act fails to clearly indicate the legislative will, it has met with our approval. (Cocoa Cola Bottling Co. v. Mosby, 289 Mo. l.c. 472 and cases; Booth v. Scott, 205 S.W. (Mo.) 633.)

> With this end in view we have frequently held that a numerical reference to the section sought to be amended without a statement of the subject-matter of the amendatory act is a sufficient title to an act which deals exclusively with the subject of the section to be amended. (State v. Mullinix, 301 Mo. l.c. 390 and cases.) We therefore hold the title to be sufficient."

The case of Stephens v. Gordon, 266 Mo. 206, is an interesting case dealing with the claim that the State Capitol Commission Board that built the present capitol building had authority to spend $500,000 of the $3,500,000 bond issue for furnishing the equipment for the capitol building. They there sought to support the plaintiff's claim by reference to the title, but the court held they could not do that because the body of the bill was plain and unambiguous. At l.c. 216 the court said:

> " * * * * There is no ambiguity in the act of March 24, 1911, as already pointed out, and resort to the title is therefore not justified by the rule. * * * *"

In State v. Cox, 234 Mo. 608, in passing upon the sufficiency of the title to the bill under attack, the court held at l.c. 608:

> "It is true the title to the primary election law does not recite that penalties are prescribed for the violation of its provisions. It is not necessary that the title of said act should refer to such penalties. The creation of penalties for violation of a law is but an incident or detail of the law, and need not be referred to in its title."

In the case of Ex parte Mutchens, 296 Mo. 331, the court, en banc, sustained the validity of a title which designated the sections amended by simply referring to their numbers in statutes, and said at l.c. 336:

> "The contention as to the invalidity of the title of the act under review demands consideration; it is urged first that it is defective in designating the sections amended simply by referring to their numbers in the authorized edition of the statutes. A liberal construction of the constitutional provision (Sec. 28, Art. IV) is authorized; regard being had to the purpose of the provision which is to prevent members of the General Assembly from being misled as to the character of the legislation. Acting under the rule thus construed, we have held that amendments to sections of the Revised Statutes may be made by acts whose titles refer only to those sections by numbers. (Asel v. City of Jefferson, 287 Mo. 195, and cases p. 205.)"

Again, at l.c. 338, the court said:

> "A failure of the title to refer to the penalty prescribed in the body of the act is urged as error. This court has on several occasions ruled adversely to this contention. If the title of an act is a fair index of same, which we hold it to be in this case, matters not specified therein necessary to render it effective, such as the punishment in a criminal statute, will not render it invalid. (State v. Cox, 234 Mo. l.c. 609; State v. Peyton, 254 Mo. l.c. 524.)"

Conclusion.

From the above decisions construing the question here considered, it will be observed that the courts give a liberal construction to the section of the Constitution dealing with the title to a bill, and hold the title to be a compliance with the constitutional requirement when the title includes the main points of the bill and does not mix up a number of

different subjects in the same bill. It is not necessary that the title should include within it all of the details, nor even, as is held above, the penalty prescribed by the bill. While we regard it as better practice for those interested in a bill that carries an emergency clause to amend the title or to see that the title contains the words "with an emergency clause," and the same may easily be done without loss of time or effort and thereby all question be eliminated as to that phase of the validity of the bill, still we regard the title as sufficient where it does not specify that it has an emergency clause, and the bill becomes effective at the time it is finally passed.

Yours very truly,

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Assistant Attorney General

APPROVED:

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Attorney General

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