

LEGISLATURE: Validity of the Act of extra session introduced prior to message on subject.

November 10, 1933

FILED NO. 44



Hon. F. J. Iffrig  
House of Representatives  
Jefferson City, Missouri

My Dear Mr. Iffrig:

We render you the following opinion in accordance with your oral request for advice as to the constitutionality of an act which was introduced in the House prior to the time the subject matter of such act was referred to the General Assembly by the special message of the Governor.

We shall first refer to the constitutional provisions respecting the powers of the General Assembly in extra session. Portions of Section 9 of Article 5 of the Constitution reads as follows:

"\* \* \*On extraordinary occasions he (the Governor) may convene the General Assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary."

And Section 55 of Article 4 of the Constitution reads as follows:

"The General Assembly shall have no power, when convened in extra session by the Governor, to act upon subjects other than those specially 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 foregoing constitutional provisions are self-enforcing and have been held to be mandatory. 295 Mo. 402. Whether or not a bill introduced prior to the special message may be proceeded upon is controlled by the proper interpretation to be placed upon the phrase "to act" as used in Section 55 above quoted. There seems to have been no direct decision on this

matter but in our opinion the case of Wells vs. The Missouri Pacific Railroad Company, 110 Mo. 286, leads us to the correct interpretation of this phrase. In that case the Court was considering a law enacted in special session in respect to railroads, and after holding that the act did not fall within the Governor's special message, the Court considered the effect of the Governor's approval of the bill as ratifying or validating the act. The Court in referring to the process through which a bill goes before becoming a law, stated at page 297:

"\* \* \*When the people have declared a certain form indispensable to the proper expression of their will, it is no part of our function to adjudge that form unnecessary or immaterial. On the contrary, our bounden duty is to enforce that declaration.

It follows that the 'act' in question cannot be sustained as a constitutional exertion of the law-making power.

That position being reached, it is unimportant that the governor, by his formal signature, in due course, approved the bill after its passage by the general assembly.

By the terms of the constitution the legislative power to act in the premises depended on the governor's taking the initiative, by a proclamation or a message. His subsequent approval cannot be accepted as a substitute for these earlier steps which the fundamental law prescribes.\* \* \*"

In Webster's we find the verb 'act' as meaning "to exert power." The introduction of a bill is an exertion of legislative power required in the process of enacting a valid law. Under the decision in the Wells case, the General Assembly in special session is without the power to act until the Governor has taken the initiative and placed the matter before the assembly. It is accordingly the opinion of this office that no validity has been given the act in question by the subsequent message of the Governor.

Hon. F. J. Iffrig.

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We return herewith two copies of the bill, one type-written and one printed, but as we understand your inquiry, the only information you desired on this bill has been answered in the foregoing opinion. We do not pass upon any other feature of the Act.

Respectfully submitted,

HARRY G. WALTNER, JR.  
Assistant Attorney General.

APPROVED:

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Attorney General.