

LEGISLATURE:  
LEGISLATIVE COMMITTEES:  
COMMITTEES: GENERAL ASSEMBLY:  
SPECIAL SESSION OF THE LEGISLATURE:  
CONSTITUTIONAL LAW:

Committees may be appointed to function during Special Session of the Legislature only as to matters within the call of the Governor or any special message of the Governor. Such com-

mittee may be created by resolution of one house and expenses thereof paid in the normal manner and from the usual funds.



March 30, 1956

*C. F. Jones v Atterbury*  
*300 S.W. 2 106*

Honorable Roy Hamlin  
Speaker, House of Representatives  
State Capitol Building  
Jefferson City, Missouri

Dear Sir:

This is in reply to your recent request for an official opinion of this office which reads:

"\* \* \* I would appreciate it if you would also give me a written opinion as to whether or not the House of Representatives, at this special session, can consider any House resolution setting up a committee of the House to make investigations of certain matters not within the proclamation of the Governor, and whether any expenses created by such a committee could legally be paid from the contingent fund of the House or any money out of general revenue of the State.

"Further, whether or not the expense of any such House committee, even though it called for investigation of a matter within the scope of the Governor's proclamation, could legally be paid from either the House contingent fund or from any other fund out of general revenue, if such resolutions were not adopted by both the Senate and the House and signed by the Governor."

It is specifically noted that this request refers to, and this opinion pertains only to committees formed by the Legislature while in Special Session, which committees are to function

Honorable Roy Hamlin

only during such Special Session. As to any question concerning the power of such committees to function after the adjournment of such Special Session, the previous opinion of this office dated July 6, 1955, and addressed to you would be applicable.

Article III, Section 39 (7) of the Missouri Constitution of 1945 provides:

"The general assembly shall not have power:

"(7) To act, when convened in extra session by the Governor, upon subjects other than those specially designated in the proclamation calling said session or recommended by special message to the general assembly after the convening of an extra session; \* \* \*"

It will be noted that this provision is very broad and all-inclusive. The Constitutions of many other states prohibit the Legislature in Special Session from enacting "legislation" during such Special Session on subjects other than those recommended by the Governor, whereas the above-quoted provision of the Missouri Constitution specifically takes from the Special Session of the Legislature the power to act upon subjects other than those designated by the Governor.

The powers and duties of a committee created by the Legislature, or by one house thereof, depend upon the powers of the body which creates such committee. The committee is but an arm or instrumentality of the body which creates it and cannot perform functions or exercise powers greater than those of the source from which it comes. That is, the committee cannot have greater powers than the Legislature, or the one house thereof, which creates such committee. Thus it is stated that the investigative powers of a legislative committee can only be directed to subjects legitimately within the scope of the functions, powers and duties of the Legislature itself and that it is a proper function of the committee only to secure information necessary to the proper discharge of the powers, duties and functions of the Legislature, or the one house thereof, which creates the committee. In this connection see *Ex parte Caldwell*, 61 W. Va. 49, 55 SE 910; *Tipton v. Parker*, 71 Ark. 193, 74 S.W. 298; *Greenfield v. Russel*, 292 Ill. 392, 127 NE 102; and *State v. Fluent*, 191 P. 2d 242 (Wash. Sup.)

The general rule concerning this limitation upon the power of a legislative committee is stated in 49 Am. Jur., States, Section 43, page 260, as follows:

Honorable Roy Hamlin

"Whenever the legislature has authority to enact laws, it has corresponding authority to make necessary investigations for the ascertainment of such facts as are a necessary predicate for the enactment of the law, and to this end may appoint investigating committees. This is the principal purpose and function of legislative committees. \* \* \*"

And, in the recent case of DuBois v. Gibbons, 2 Ill. 2d 392, 118 NE 2d 295, the Supreme Court of Illinois in considering the limitation upon the legislative power of investigation by committees thereof said at l.c. 118 NE 2d 307:

"But there are limitations on the legislative power of investigation and this brings us to the crux of appellees' objection which is not that the city council of the city of Chicago is entirely lacking in the power to investigate but rather that under the particular ordinance in question a true legislative purpose is lacking, especially as indicated by the circumstances disclosed by the pleadings in this case. The basis for the legislative power to investigate lies in the necessity of the legislature obtaining adequate information in order to legislate. Since this is the basis of the power, the investigation must be for a legislative purpose. Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102; Sinclair v. United States, 279 U.S. 263, 49 S. Ct. 268; McGrain v. Daugherty, 273 U.S. 135, 47 S. Ct. 319. If such purpose, either express or fairly inferable, is lacking, the investigation will not be sustained. Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102. Thus, the first limitation on a legislative investigation is that it must be for a legislative purpose. \* \* \*"

From the foregoing it would appear that the power of the Legislature to create a committee and the power of such committee to investigate is limited to a committee created for, and investigation by such committee for, the purpose of securing information necessary to the exercise of the functions, powers and duties of the Legislature, or one house thereof, which creates the committee. In Missouri by Article III,

Honorable Roy Hamlin

Section 39 (7) of the Constitution quoted hereinabove the Legislature is specifically limited, when sitting in Special Session, to action upon subjects designated by the Governor, and therefore it has no functions, powers or duties in connection with any other subjects, and it would follow that no committee can be created to investigate subjects which are not within the power of the Legislature in Special Session to act upon.

No Missouri authority has been found on this question and a considerable search has revealed only one case in the United States on the subject. This is the case of Ex parte Walters, decided by the Court of Criminal Appeals of Texas in 1912, and reported in 144 SW 531. Although the opinion in that case written by Presiding Judge Davidson appears to represent only the reasoning of that Judge, which was not concurred in by the other two judges, it appears to be carefully considered and is believed to be in conformity with the general principles set out hereinabove. In this case it is said at l.c. 535:

"\* \* \* Be it remembered that this was a special, and not a regular or biennial, session of the Legislature. The scope of the authority of a special session of the Legislature is to be found in section 40 of article 3 of the Constitution, which reads as follows: 'When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor, and no such session shall be of longer duration than thirty days.'

"From this it will be observed that, when the Legislature is convened in special session, such express limitation is placed upon the power of that body that it cannot legislate upon any subject or subjects except those specially designated in the proclamation of the Governor calling the body together, or such as may be subsequently presented to that body by the Governor. This limited rule set out in the above section does not apply to the Legislature when sitting in its biennial session. It will therefore be observed there is a marked difference between the power of the Legislature in regular session as compared with its power when sitting in a special session. \* \* \*"

Honorable Roy Hamlin

The Judge went on to further discussion of this subject and said at l.c. 535:

"The question, then, here is: What may the Legislature do at a special called session in regard to legislation, and for what purpose by concurrent resolution, or a resolution of either house, and for what purpose may either or both houses appoint committees, and what subjects may be invested by said committee? To the mind of the writer, these are answered definitely by article 3, Sec. 40. By the express terms of that section, the Legislature is expressly restricted and limited, first, to the passage only of such laws as the Governor has authorized in his proclamation, or in subsequent messages submitted by him; and, second, either or both houses may have authority to make investigations looking to the enactment of such laws as are within the proclamation or message of the Governor, but the Legislature may not and cannot investigate matters for legislative purposes not within the proclamation. Nor would the Legislature have authority to investigate matters the Governor declined to submit to it, and this proposition is intensified when the demand or request has been made upon him and he declines to accede. This, the writer understands, would be the limit of authority on the part of the Legislature to either legislate or investigate matters looking to legislation. This, as before stated, is more than intensified when the fact is taken into consideration that the Governor refused to refer or submit these matters for legislation. It is thought to be a correct statement that the Legislature either in general or special session would have no authority, either as a body or through committees, to investigate matters for legislation about which that body could not enact laws, and when they were without authority to so enact. It might be concluded as a correct proposition, so far as this case is concerned, that whenever the Legislature has authority to enact laws, it would have corresponding authority to make necessary investigations for the ascertainment of such facts as would be necessary as

Honorable Roy Hamlin

a predicate for the enactment of laws wherein the matter was then pending and formed a part of the proceedings of that body. These rules apply as well to special as to general sessions, but there must be authority in either event as a predicate for legislative action upon the subject or subjects under investigation; otherwise it could not be considered a part of the proceedings of the Legislature. If the above propositions are correct, then the special session had no authority to appoint the committee to investigate, and the committee so appointed was powerless to investigate matters about which that body could not possibly legislate or take action.

"It is true the Legislature is one of the three co-ordinate branches of the government, and in a general way has power in matters of legislation; but there is to be noted a marked difference and distinction between the scope of power of the regular session and that of a special session of the Legislature. When that body meets in its biennial session, its authority to enact laws and make investigations is as broad as is the constitutional guaranty of power, to wit, as the lawmaking department of the government. The limitation of such power is to be found in the terms of the Constitution as expressed or necessarily implied. It is not the purpose here to go into any discussion as to the limitations of express or implied power, but the rule is entirely different when the Legislature meets in special session. In the latter case they have no authority to legislate, except as set forth by the Governor in his proclamation, or in subsequent messages sent by him to that body. These propositions being correct, the Legislature was without authority to create the committee before whom applicant was called upon to testify, and the committee was without authority to propound questions to or demand answers from this applicant. \* \* \*"

Honorable Roy Hamlin

From this authority this office concludes that the House of Representatives may not create a committee when the Legislature is convened in Special Session for the purpose of investigating subjects which have not been designated by the Governor.

Your second question asks whether or not expenses of a committee which might be created to investigate a subject within the Governor's call may be paid from public funds when such committee is not created by a resolution concurred in by both the House and Senate and signed by the Governor. Since this question pertains to a committee which will function only during the Special Session of the Legislature, such committee may, according to general law, be created by one house thereof. This general rule is stated in 49 Am. Jur., States, Sec. 41, page 258, and further citation on this point is not deemed necessary. It is there said:

"It is generally conceded that a legislative committee which is to function during the sessions of the legislature may be created either by a separate resolution of one branch of the assembly or by a concurrent resolution of both branches. Either house may appoint separate committees or the two houses acting concurrently may appoint joint committees for any proper purpose, and these committees may exercise during the sessions of the legislature such power or powers as the house or houses appointing them may lawfully delegate or impose, although only such powers can be delegated as are possessed by the house or houses making the appointment. Of course such a committee may function under a regularly passed act of the legislature or general assembly."

Therefore, since the committee now being considered may properly be created by resolution of one house the expenses thereof may be paid in the normal manner and from the usual funds.

#### CONCLUSION

On the basis of the foregoing it is the conclusion of this office that when sitting in Special Session neither the Legislature, nor one house thereof, may create a committee for the purpose of investigating a subject or subjects not recommended by the call or special message of the Governor, but that the Legislature, or either

Honorable Roy Hamlin

house thereof, may create a committee to investigate subjects within the call of the Governor, and that the expenses of such committee functioning during the Special Session of the Legislature may be paid out of public funds in the normal manner and from the usual sources.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Yours very truly,

John M. Dalton  
Attorney General

FLH:vlw