

CONSTITUTION:

House Bill No. 15 constitutional;
the amendment comes within the
GOVERNOR'S SPECIAL MESSAGE: terms of the Governor's Special
Message.

April 19, 1944

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnell:

We have for attention your letter of April 17th,
1944, in which you request the opinion of this department.
We set forth your letter in full:

"In Proclamation by which the Sixty-Second General Assembly of the State of Missouri was convened in extra session the action of that body is stated to be deemed necessary concerning, among other things, repeal of provision, in subdivision (e) of Section 5728 of Senate Bill 49 of the Sixty-Second General Assembly of Missouri (Laws of Missouri of 1943, page 864 and following), that the annual license fee required by Article 8 of Chapter 35 of said Statutes is intended to cover only the motor vehicle for which it is issued and none other.

"House Bill No. 15 of the Sixty-Second General Assembly in extra session contains, among other things, the below quoted language, which language is not contained in the present Statutes of Missouri:

"A motor carrier may elect to have described on his or its annual license card of any regularly licensed motor

vehicle, trailer or semi-trailer, not more than two emergency vehicles of weight carrying capacity not greater than that of the regularly licensed vehicle upon the payment by such motor carrier of an annual fee of \$5.00 for each alternate emergency vehicle described on said annual license card. Only one of such three vehicles as shown on the annual license card may be operated in the State at any one time.'

"Your opinion, as soon as possible, is respectfully requested on the following questions:

"A

"Had the Sixty-Second General Assembly in extra session power to enact the above quoted language?"

"B

"If the Sixty-Second General Assembly in extra session did not have power to enact said above quoted language, is said language severable from the other provisions of said House Bill No. 15?"

We shall answer your questions in the order submitted.

A

"Had the Sixty-Second General Assembly in extra session power to enact the above quoted language?"

That part of your special message to the General Assembly pertaining to the matter under consideration, which gives your reasons calling for the changes in Section 5728 of Senate Bill No. 49 of the Sixty-Second General Assembly of

Missouri, Laws of Missouri 1943, page 864, is found on pages 22 and 23 of your message and is as follows:

"CERTAIN MOTOR VEHICLE LICENSE FEES.

"On December 1, 1943 the Public Service Commission cancelled, effective January 1, 1944, paragraph (a) of a certain then existing rule known as Rule 23, General Order No. 33-B, which paragraph is as follows:

"Every motor carrier at the time of licensing a motor vehicle, trailer or semi-trailer may elect to have described on his or its annual license card two emergency vehicles of weight carrying capacity not greater than that of the licensed vehicle. Either of such described two emergency vehicles will be allowed to operate or be used in lieu of the licensed vehicle, as extra or emergency equipment. Only one of such three vehicles as shown on the annual license card may be operated in the State at any one time; and when either of the emergency vehicles shown on the annual license card is being operated it must carry the annual license card as provided by this Rule, and must be owned or leased by the operator and operated by him or it or his or its servant or servants. Upon the issuance of the annual license card above described if the licensed carrier elects to describe one or two emergency vehicles as provided for above, there shall be paid to the State Treasurer of the State of Missouri an annual fee of \$5.00 for each emergency vehicle described in the aforesaid annual license card.'

"Subdivision (e) of Section 5728 of Senate Bill No. 49 of the Sixty-Second General Assembly of Missouri (Laws of Missouri of 1943, page 864 and following) provides

that the annual license fee required by Article 8 of Chapter 35 of the Revised Statutes of Missouri of 1939 is, to quote said Sub-division, 'intended to cover only the motor vehicle for which it is issued and none other * * *'.

"It is my information that motor carriers have been experiencing great difficulty in purchasing and obtaining new equipment and that it is becoming increasingly difficult to keep present equipment in service because of age and numerous breakdowns.

"I hereby recommend the repeal of the provision, in Subdivision (e) of Section 5728 of Senate Bill No. 49 of the Sixty-Second General Assembly of Missouri, that the annual license fee required by Article 8 of Chapter 35 of the Statutes of Missouri is intended to cover only the motor vehicle for which it is issued and none other."

The question to be determined is whether the language used in your special message of March 15, 1944, quoted above, is sufficient for the General Assembly to base the enactment of the new matter found on pages 5 and 6 of Senate Bill No. 15, viz:

"(e) A motor carrier may elect to have described on his or its annual license card of any regularly licensed motor vehicle, trailer or semi-trailer, not more than two emergency vehicles of weight carrying capacity not greater than that of the regularly licensed vehicle upon the payment by such motor carrier of an annual fee of \$5.00 for each alternate emergency vehicle described on said annual license card. Only one of such three vehicles as shown on the annual license card may be operated in the State at any one time. * * * * *

"* * * * *

"* * * Provided, however, such credit shall not apply on alternate or emergency vehicles."

Article V, Section 9 of the Missouri Constitution, relative to the Governor calling an extra session of the General Assembly, reads in part as follows:

"* * * 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 power of the General Assembly at extra sessions is limited by Article IV, Section 55 of the Missouri Constitution, which provides 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."

It will be observed that the Governor, in his message, recommended the repeal of that part of Subdivision (e), Section 5728, Laws of Missouri, 1943, viz:

"The annual license fee required by this article is intended to cover only the motor vehicle for which it is issued and none other; * * * * *"

Is the General Assembly, by the Governor's message, limited to one of two things: either to repeal the above portion of Subdivision (e), or, not to repeal it? We are not inclined to the view that such a narrow construction should be given to the subject that the General Assembly is so narrowly limited by the Governor's message.

In the case of *State v. Tippet*, 317 Mo. 319, 296 S. W. 132, the constitutionality of a part of the motor vehicle law, Extra Session 1921, page 103, was attacked on the ground that a criminal statute which provided that it was a felony for a driver of an automobile to leave the scene of an accident without reporting to a police station or judicial officer, was a violation of Section 55, Article IV of the Missouri Constitution in that it was not within the terms of the Governor's message, which read in part: "The subject of regulating or licensing motor vehicles, * * *" wherein the court said, l. c. 136:

"We think the statute, relative to leaving the scene of accident, is comprised within the term 'regulating' as used in the special message. *Lauck v. Reis*, supra, defines 'regulate,' among others, as 'to direct by rule or restriction.' It has also been defined as 'a rule prescribed for conduct.' Providing for the stoppage by the operator of a motor vehicle after injury or damage, or the reporting of the same, is directing by restriction or course of conduct the operation or use of the vehicle. That it proscribes free operating after an accident and prescribes a punishment therefor fails to limit the force of the term 'regulating' with respect to motor vehicles. In view of the recognized canon of construction that a statute is not to be held unconstitutional, unless clearly so, and that every fair and reasonable intendment in favor of its constitutionality is presumed, the assignment is ruled against defendant."

What was said by the Supreme Court in the Tippet case was later affirmed in State v. Johnson (Mo.) 55 S. W. (2d) 967, l. c. 968.

We have read the opinion of the Supreme Court in the case of Ex parte Seward, 253 S. W. 356, 299 Mo. 385, wherein the court discusses at length Section 55, Article IV of the Constitution, with particular reference to the word "recommend" as used therein; in which the court held that it is not essential to use that word in a special message to the General Assembly, although it is used in Section 55, Article IV of the Constitution. The court held that it is there used in the sense that a certain subject matter is committed or entrusted to the Legislature for its consideration.

In the matter under consideration, when the Governor used the expression "I hereby recommend the repeal of the provision, in Sub-division (e) of Section 5728, * * *" it called the attention of the General Assembly to said sub-division of Section 5728 and did not necessarily limit it to a repeal or non-action in reference to same.

The Governor's message clearly informed the General Assembly that he desired legislation relative to motor vehicle license fees, and, while the Legislature did not change the statute in exactly the manner suggested by the Governor, it reasonably came within the terms of the message. By his special message the Governor submitted and entrusted to the General Assembly the subject of amending particular portions of Section 5728. We think that the language in the message was stated to the General Assembly with sufficient specificness as required by Article V, Section 9 of the Missouri Constitution, and the General Assembly was authorized to act, and did act, upon the subject within the limitations of Article IV, Section 55 of the Missouri Constitution.

There is no rule of law more firmly established in our jurisprudence than that a statute is not to be held unconstitutional, unless clearly so, and every reasonable intendment in favor of constitutionality is presumed.

In 11 American Jur., under the subject of "Constitutional Law," Section 92, page 719, it is stated;

"In all instances where the court exercises its power to invalidate, the conflict of

the statute with the Constitution
must be irreconcilable, * * * * *

The same text, Section 128, page 776, reads:

"The basic principle which underlies the entire field of legal concepts pertaining to the validity of legislation is that by enactment of legislation, a constitutional measure is presumed to be created. In every case where a question is raised as to the constitutionality of an act, the court employs this doctrine in scrutinizing the terms of the law. In a great volume of cases the courts have enunciated the fundamental rule that there is a presumption in favor of the constitutionality of a legislative enactment."

As supporting this statement in the text a legion of cases are cited from the United States courts and from practically every state of the Union, including more than twenty from the courts of Missouri. It is our judgment that the Supreme Court of Missouri would hold that House Bill No. 15 is constitutional and that it was passed with due regard to Article V, Section 9 and Article IV, Section 55, of our Constitution.

B

"If the Sixty-Second General Assembly in extra session did not have power to enact said above quoted language, is said language severable from the other provisions of said House Bill No. 15?"

Since it is our opinion that the Sixty-Second General Assembly in extra session had the power to enact this legislation it is unnecessary for us to answer question B in your letter.

CONCLUSION

It is, therefore, our opinion that the amendments to Section 5728, Senate Bill No. 49, Laws of Missouri, 1943, page 864, as made by the General Assembly in its special session in March 1944, by House Bill No. 15, came within the terms of the Governor's Special Message of March 15, 1944, and were constitutionally adopted.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney-General

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