CONSTITUTIONAL LAW:)
EFFECTIVE DATE OF STATUTES:)

Time for preparing resolution authorized by Section 29, Art. III of the Constitution. Effect of Section 659, R. S. 1939.

FILED
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May 22, 1945.

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Dr. Charlton F. Chute
Director of Research
Legislative Research Committee
State Capitol Building
Jefferson City, Missouri

Dear Dr. Chute:

Under date of May 9, 1945, you wrote the Attorney General requesting an opinion as follows:

> "A resolution has been introduced in the House of Representatives which provides that the General Assembly recess from June 29, 1945 to the following September 4th. In the event of such recess and reassemblage, could the legislature then provide that its enactments, other than appropriation acts and those containing an emergency clause, become effective at a date less than ninety days after it may finally adjourn, and in the event the legislature did not have a thirty day recess between September 4th and its final adjournment?
>
> "The following may clarify this question; namely, if the legislature reconvenes on September 4th and passes some legislation other than appropriation acts and acts containing an emergency clause and does not then recess for a period of thirty days and continues in session until less than ninety days prior to January 1, 1946, could such legislation be made to take effect on January 1, 1946, in view of the provisions contained

> in Section 29, Article III of the present Constitution?
>
> "In an opinion directed to the then Secretary of State, the former Attorney General, (see Laws of 1943, pages 1088 to 1090, inclusive) ruled upon the effective date of enactments under the former constitutional provisions. It has been suggested, however, that such opinion does not apply at the present time, due to some difference in the former and present Constitution."

In your letter you direct attention to an opinion from the office of the Attorney General, dated August 31, 1943, to the Honorable Dwight H. Brown, then Secretary of State, construing and applying Section 36, Article IV of the Constitution of 1875 and Section 659, R. S. Mo. 1939, to bills enacted by the 62d General Assembly, which opinion is not in harmony with the provisions of the present Constitution.

As your letter is understood, there are two questions to be answered concerning the effective date of bills enacted by the 63d General Assembly under the present Constitution and statutes. These questions are:

(1) May the General Assembly, under the Constitution, recess for more than thirty days and upon termination of the recess then fix by resolution the effective date of bills passed, which effective date would be less than ninety days after the final adjournment of the legislative session?

(2) Is there any law, other than Section 29 of Article III of the Constitution, to be considered in determining the effective date of bills enacted by the 63d General Assembly?

For the purpose of convenience, Section 29 of Article III of the Constitution, referred to in your letter, is herein set out:

> "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 appellate courts of Missouri have not had occasion to interpret Section 29 of Article III of the new Constitution. No decisions of the courts of other states interpreting a similar constitutional provision have been found. The proceedings of the Constitutional Convention, including the journals and debates, have been examined with reference to deliberations on Section 29 of Article III, but nothing has been found which is of assistance in interpreting Section 29.

Therefore, it is necessary for us to undertake to interpret this section under general principles of law, and at this point it is desired to call attention to certain fundamental principles of law relating to the interpretation and construction of constitutions.

The intention of the makers of the Constitution must be determined when interpreting constitutional provisions. State ex inf. Norman v. Ellis, 325 Mo. 154, 28 S. W. (2d) 363; Graves v. Purcell, 337 Mo. 574, 85 S. W. (2d) 543. The established rules of construction applicable to statutes apply to the construction of constitutional provisions. State ex rel. Buchanan County v. Imel, 242 Mo. 293, 146 S. W. 793; C. J. S., Vol. 16, Section 15, page 51.

Necessary to the solution of the first question is a determination of when the Constitutional Convention intended the joint resolution, provided for in Section 29 of Article III of the Constitution, to be made. This clause of the Constitution is as follows:

> "* * * 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."

There are two constructions possible in regard to this clause: (1) that the joint resolution may be passed after a reassembly of the Legislature following the recess referred to, and that such resolution would apply to laws passed not only before the recess but after reassembly; or (2) that the resolution must be passed at the time of the recess; thus, only laws passed before the recess, would be effected.

It is our opinion that the second interpretation is the only one consistent with reason and logic for the following reasons. The intention of the Constitutional Convention is to be ascertained and other portions of the Constitution adopted at the same time are to be considered and harmonized with the provision here under consideration. State v. Harris, 337 Mo. 1052, 87 S. W. (2d) 1026; Hull v. Baumann, 345 Mo. 159, 131 S. W. (2d) 721; State ex rel. Central Surety Corp., v. Tax Commission, 348 Mo. 171, 153 S. W. (2d) 43.

Article I, Section 13 of the Bill of Rights of the new Constitution, provides that no ex post facto law, or law retrospective in its operation, can be enacted. It is our opinion that the first interpretation of the proviso in Section 29 would leave open the possibility of the enactment of legislation, which would, in fact, be retrospective. This is true, because, if the resolution provided therein was made after reassembly of the Legislature, the resolution could be made more than ninety days after the beginning of the recess. Thus, the act would be effective and go into operation at a date which would be prior to the date the resolution was adopted.

It is, therefore, impossible, under such an interpretation, to harmonize Section 29 with Section 13 of the Bill of Rights. We do not believe the framers of the Constitution intended a construction inconsistent with the Bill of Rights.

The clause which we are here considering is in the form of a proviso or exception to the prior wording of Section 29. It is a fundamental legal principle that provisos should be construed with reference to the preceding parts of the clause

to which they are attached. Joplin Supply Co., v. Smith, 182 Mo. App. 212, 167 S. W. 649; Allen Estate Ass'n, v. Boeke, 300 Mo. 599; Ex parte Andrews, 223 Mo. App. 863.

The first interpretation of the proviso would render the prior portion of the section meaningless, since, under that interpretation, the joint resolution could be passed at such a time that under no circumstances would any law take effect after adjournment of the session. The main body of Section 29 provides that the latter is exactly what should be the case, except in the singular circumstances as set out in the proviso. Such a result is inconsistent with general legal principles. Joplin Supply Company, v. Smith, supra; State v. Murphy, 347 Mo. 484, 148 S. W. (2d) 527; Castilo v. State Highway Commission, 312 Mo. 264.

Further, in construing a statute or a constitutional provision, the court may inquire into the consequences of any proposed interpretation of the law. McGill v. City of St. Joseph, 225 Mo. App. 1038, 38 S. W. (2d) 725.

The consequences of the interpretation which would allow the resolution to be passed after recess would, it seems, lead to an unreasonable, absurd and unjust result. It would mean that the people would have no anticipation of the Legislature, and since the main part of Section 29 would be controlling until a resolution was passed, there would be no reason for any assumption that a law would become effective prior to ninety days after the adjournment of the session. Thus, it is entirely possible that the public would be subjected to the provisions of a legislative enactment prior to the passage of the resolution, which resolution would be the act which later made it become effective. It would seem unjust to say that the public would be subject to an act which it had no reason to believe had become effective. Absurd or unreasonable construction will not be given to legislative acts or constitutional provisions and the courts in all cases will avoid such construction if possible. State v. Irvine, 335 Mo. 261, 72 S. W. (2d) 96; Chrisman v. Terminal R. R. Ass'n., 157 S. W. (2d) 230 (Mo. Sup.); State v. Ball, 171 S. W. (2d) 787 (Mo. App.).

A further, less persuasive, indication of intent is indicated by the use of the word "shall" in the proviso, because

the word "shall," in a legislative enactment, ordinarily applies to something to be done or to take place in the future. Minter v. Bradstreet, 174 Mo. 489, 73 S. W. 668.

From the foregoing, we are of the opinion that the resolution authorized by the proviso in Section 29, Article III of the Constitution, fixing the effective date of laws previously passed, must be passed before the commencement of the recess.

In regard to the second question, attention is directed to Section 659, R. S. Mo. 1939, which section is as follows:

> "A law passed by the general assembly shall take effect ninety days after the adjournment of the session at which it is enacted, subject to the following exceptions:
>
> "(a) A law necessary for the immediate preservation of the public peace, health or safety, which emergency must be expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house, said vote to be taken by yeas and nays, and entered on the journal, or a law making an appropriation for the current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, shall take effect as of the hour and minute of its approval by the governor; which hour and minute may be endorsed by the governor on the bill at the time of its approval.
>
> "(b) In case the general assembly, as to a law not of the character hereinbefore specified, shall provide that such law shall take effect on a date in the future subsequent to the expiration of the period of ninety days hereinbefore mentioned, said

> law shall take effect on the date thus fixed by the general assembly.
>
> "(c) Laws not of the nature hereinbefore specified enacted by the general assembly at its regular session in 1939 and each ten-year period thereafter, and except as otherwise provided by law, the Revised Statutes of 1939 and each ten-year period thereafter, shall take effect on the first day of November in the year of their enactment or authorization: Provided, that unless suspended under the referendum or unless otherwise provided by law, laws changing the time of holding court shall take effect in ninety days after the adjournment of the session at which such laws may have been enacted."

This section of the statute is in conflict with Section 29 of Article III of our present Constitution and would ordinarily have no bearing upon the effective date of bills passed by the 63d General Assembly. However, the schedule of the new Constitution makes provision for existing statutes which are in conflict with the recently adopted Constitution. This provision is found in Section 2 of the Schedule, and is as follows:

> "All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Because of this portion of the Schedule of the Constitution, in determining the effective date of any bill enacted we must consider Section 659, supra, until July 1, 1946, or until this section is repealed.

Conclusion

From the foregoing, it is the conclusion of this Department that if the General Assembly contemplates a recess of a period of more than thirty days, the General Assembly, by a resolution passed before the commencement of the recess, may fix the effective date of bills enacted prior to the commencement of the recess at a time earlier than ninety days after the adjournment of the session. It cannot pass such a resolution at the time of reassembly after the termination of a recess. However, this does not apply at the present time because of the existence of Section 659, R. S. Mo. 1939, under the provisions of which section a law passed by the General Assembly shall take effect ninety days after the adjournment of the session at which it is enacted, except laws containing an emergency clause.

Respectfully submitted,

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APPROVED:

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SNC/WOJ/EG