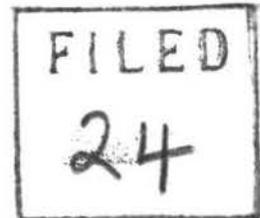


SERVICEMEN: Certain parts of Senate Bill No. 32 unconstitutional.

July 17, 1945

7/18

Honorable Phil M. Donnelly
Governor of Missouri
Jefferson City, Missouri



Dear Governor Donnelly:

In answer to your request of July 16, 1945, for an opinion as to the constitutionality of Senate Bill No. 32, we will take up the sections of the Act in the order of their appearance in the bill.

Section 1 provides as follows:

"For the purposes of taking advantage of the Servicemen's Readjustment Act of 1944, Chapter 268, Public Law 346, (S. 1767), any person who is a resident of Missouri and who served honorably in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war, may execute a deed of trust, mortgage, or other instrument, affecting the title to or disposition of real or personal property, or a power of attorney, the validity of which is governed by the law of this State. For the purposes of taking advantage of said Federal Act such person may also contract, or borrow money for the purchase or construction of homes, farms and business property whether the money is to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by him to be occupied as his home. For the purposes of taking advan-

tage of said Federal Act such person may also borrow money for the purpose of making repairs, alterations, or improvements in, or paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him as his home. For the purposes of taking advantage of said Federal Act such person may also borrow money to purchase any land, buildings, live stock, equipment, machinery or implements, or in repairing, altering, or improving any buildings or equipment, to be used in farming operations, borrow money to purchase any business, land, buildings, supplies, equipment, machinery, or tools to be used in pursuing a gainful occupation, (other than farming), and to borrow money, enter into a contract, agreement or other instrument in writing as may be necessary under the Servicemen's Readjustment Act of 1944."

Section 1, by implication, partially repeals the effect of Section 3358, R. S. Mo. 1939, which provides as follows:

"No action shall be maintained whereby to charge any person upon any debt contracted during infancy, unless such person shall have ratified the same by some other act than a verbal promise to pay the same; and the following acts on the part of such person after he becomes of full age shall constitute a ratification of such debt: First, an acknowledgment of, or promise to pay such debt, made in writing; second, a partial payment upon such debt; third, a disposal of part or all of the property for which such debt was contracted; fourth, a refusal to deliver property in his possession or under his control, for which such debt was contracted, to the person to whom the debt is due, on demand therefor made in writing."

Section 1 would allow a veteran to enter into binding contracts pursuant to the provisions of the Servicemen's Readjustment Act of 1944, Chapter 268, Public Law 346, regardless of his age, even though he were under the age of eighteen. This provision is in derogation of the settled law as appearing in *Windisch, et al. v. Farrow, et al.*, 159 S. W. (2d) 392, which holds as follows:

"* * * It is settled law that though a minor is not absolutely incapable of contracting in the sense that his contract is absolutely void, but his contract is voidable only, he has a right to disaffirm his contract at any time during his minority or within a reasonable time after attaining his majority, and the disaffirmance of his contract nullifies it and renders it void ab initio. *Hamlin v. Hawkins*, 332 Mo. 1098, 61 S. W. 2d 348, loc. cit. 350; *Phillips v. Savings Trust Co.*, 231 Mo. App. 1178, 85 S. W. 2d 923, loc. cit. 925; *Robison v. Floesch Const. Co.*, 291 Mo. 34, 236 S. W. 332, 20 A.L.R. 1239."

Also, it appears that the requirements of Section 1 are not the same as those contained in the Servicemen's Readjustment Act of 1944. Title III, Chapter V, General Provisions for Loans, Section 500, provides as follows:

"* * * Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than dishonorable after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be eligible for the benefits of this title. * * * *"

Section 1, Senate Bill No. 32, provides: "* * * any person who is a resident of Missouri and who served honorably in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war, * * *" and these requirements not being the same as those required in the Federal law would undoubtedly cause some conflict and unfairness, because of the gap existing between the requirements as set forth in Section 1 of Senate Bill No. 32 and Section 500, supra, of the Servicemen's Readjustment Act of 1944.

There can be no objection to Section 1 on the ground that it violates Article III, Section 40, of the Constitution of 1945, that the General Assembly shall not pass any local or special law. In *Ballentine v. Nester*, 164 S. W. (2d) 378, the Missouri Supreme Court held as follows:

"'A classification for legislative purposes must rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed. It cannot be an arbitrary classification. The Legislature may pass laws applicable to a particular class of individuals, but such laws must bear equally upon all individuals coming naturally within the class. The Legislature may not classify by characteristics or qualities which might distinguish individuals unless that distinction applies to the particular matter under consideration.' Ex parte French, 315 Mo. 75, loc. cit. 83, 285 S. W. 513, loc. cit. 515, 47 A.L.R. 688."

The classification in Section 1 bears a reasonable and just relation in respect to the classification proposed, that is, to all veterans entitled to benefits under the Servicemen's Readjustment Act of 1944. This is not an arbitrary classification and bears equally upon all individuals coming naturally within the class.

Section 2 provides as follows:

"The disability of minority of any person not under the age of eighteen otherwise eligible for guaranty of a loan pursuant to the Servicemen's Readjustment Act of 1944 (58 Statutes at Large 284) and of the spouse of such person is hereby removed solely for the purposes of acquiring or encumbering, or selling and conveying property and the incurring of indebtedness or obligations incident to either or both, or the refinancing thereof, and litigating or settling controversies arising therefrom, if all or part of the obligations incident to such transaction be guaranteed by the Administrator of Veteran's Affairs pursuant to such Act and an application signed by such minor, or if the property is covered by a loan so guaranteed; provided nevertheless, that this Act shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were each above the age of twenty-one years. And any person who signs any deed of trust, mortgage, contract, agreement, conveyance or other instrument in writing for the purposes required by the provisions of the Servicemen's Readjustment Act of 1944, if under the age of twenty-one years but not under the age of eighteen years when such instrument is executed, shall not have the right to repudiate the written obligation so made upon reaching the age of twenty-one years for the reason that he or she was under the age of twenty-one years when signing such instrument. And any instrument executed prior to the effective date of this Act by a person in obtaining guaranty of a loan under the Servicemen's Readjustment Act of 1944 only who is under the age of twenty-one years but not under the age of eighteen years when signing such instrument is hereby validated, ratified and confirmed."

Section 2 by implication changes the provisions of Section 374, R. S. Mo. 1939, which provides as follows:

"All persons of the age of twenty-one years shall be considered of full age for all purposes, except as otherwise provided by law, and until that age is attained they shall be considered minors: Provided, however, that when any person under twenty-one years of age is married to an adult who has or claims any interest in real estate and wishes to convey, encumber, lease, or otherwise dispose or affect the same, such minor shall be deemed of age for the purpose of joining with his or her adult spouse in the execution of any instrument affecting such spouse's real estate."

In our opinion, the quoted parts of Section 2 that are not underlined are not objectionable for constitutional reasons.

The Legislature has often undertaken to provide for the legal ages of both males and females. Prior to 1865 females were not of full age until twenty-one. After that, females were of age at eighteen, until 1921, when the legal age was made twenty-one by Laws of 1921, page 399. The Act of 1939, reenacting Section 374, supra, added the proviso allowing any person under twenty-one years of age married to an adult who has or claims any interest in real estate and wishes to convey, encumber, lease, or otherwise dispose or affect the same, to be deemed of age for the purpose of joining with his or her adult spouse in the execution of any instrument affecting such spouse's real estate.

There can be no objection to Section 2 on the ground that it violates the provisions of Article III, Section 40, of the Constitution of 1945, that the General Assembly shall not pass any local or special laws, for the same reasons that we hold that Section 1 does not violate Article III, Section 40, of the Constitution of 1945.

However, we do believe that the underlined portion of Section 2 is unconstitutional and that it is in violation of

Article I, Section 13, of the Constitution of 1945, which provides as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

The Missouri Supreme Court held, in *Nahorski v. St. Louis Electric Terminal Ry. Co.*, 274 S. W. 1025, as follows:

"Statutes fixing 'full age' or legal majority affect the personal status of persons coming within it and the validity of their contracts. They are not merely procedural or remedial laws. To hold that this statute is retrospective in its operation would be to hold it unconstitutional. Section 15, art. 2, Constitution of Missouri. If its intent is, as plaintiff contends, to extend the minority of all persons who were over 18 and under 21 years of age at the time of its passage, it impairs the obligation of contracts entered into by such persons while they were of legal age under the prior statute, and the statute would have to be declared unconstitutional.***"

The valid part of Section 2 is probably applied effectively even though the underlined portion is unconstitutional. Nevertheless, the unconstitutional part would undoubtedly cause some unfortunate litigation in the future.

The court held, in *Poole & Creber Market Co. v. Breshears*, 125 S. W. (2d) 23, as follows:

"Moreover, even if the legislative declaration above quoted should be held void, as unconstitutional, it would not affect the validity of the remainder of the statute. It is well settled that a stat-

ute may be sustained as constitutional in part though void in other parts, unless its provisions are so connected and interdependent that it cannot be presumed the legislature would have enacted one without the other. 'The test * * * is whether or not * * *, after separating that which is invalid, a law in all respects complete and susceptible of constitutional enforcement is left, which the Legislature would have enacted if it had known that the excised portions were invalid.' State ex rel. Audrain County v. Hackmann, 275 Mo. 534, 205 S. W. 12, 14. The rule is thus succinctly stated in State ex inf. Hadley v. Washburn, 167 Mo. 680, 697, 67 S. W. 592, 596, 90 Am. St. Rep. 430: 'Where the part of an act that is unconstitutional does not enter into the life of the act itself, and is not essential to its being, it may be disregarded, and the rest remain in force.' That is the case before us. The declaration complained of may be eliminated and a law remains as complete and workable in every respect as it is with that declaration and which would as fully express and effectuate the obvious legislative purpose."

The provisions of the underlined part of Section 2, quoted above, are not so connected and interdependent that it cannot be presumed the Legislature would not have enacted the rest of the Act had it known that the underlined part above quoted was invalid. And, it is our belief that the unconstitutional portion does not enter into the life of the Act itself, and is not essential to its being, and it may be disregarded, and the rest of the Act still remain in force.

We do not question the validity of Section 3, Section 4, or Section 5.

CONCLUSION

Therefore, it is the opinion of this department that the following part of Section 2, Senate Bill No. 32, which

reads as follows: "And any instrument executed prior to the effective date of this Act by a person in obtaining guaranty of a loan under the Servicemen's Readjustment Act of 1944 only who is under the age of twenty-one years but not under the age of eighteen years when signing such instrument is hereby validated, ratified and confirmed." is invalid as being in conflict with Article I, Section 13, of the Constitution of 1945; that there are no constitutional objections to Section 1, the rest of Section 2, Section 3, Section 4 and Section 5, of Senate Bill No. 32, and that the unconstitutional part of Section 2 is not of such an integral part of the Act as to affect the validity of the remainder of the statute.

Respectfully submitted,

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APPROVED:

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AVO:CP