

GOVERNOR: Senate Bill No. 488 of the Second
LEGISLATURE: Regular Session of the 76th General
CONSTITUTIONAL LAW: Assembly is unconstitutional be-
cause it authorizes the Senate and
House of Representatives to determine, by resolution, the number of
their officers and employees in excess of the limitations imposed
by Article III, Section 17 of the Missouri Constitution.

OPINION NO. 147

May 4, 1972



Honorable Warren E. Hearnes
Governor of Missouri
Executive Office
State Capitol Building
Jefferson City, Missouri 65101

Dear Governor Hearnes:

You recently requested of this office an opinion concerning the constitutionality of Senate Bill No. 488 of the Second Session of the 76th General Assembly which permits the General Assembly of the State of Missouri to establish the number of its employees and officers by resolution. You specifically asked ". . . whether or not the constitutional authority to change the number of employees . . . includes the right to further delegate that authority to . . . [the legislature] . . . by resolution rather than to [establish] a specific number of employees by the enactment of a law."

Senate Bill No. 488 repeals Section 21.150, RSMo 1969 and enacts a new section relating to the same subject. The primary change is made in subparagraph 1. The existing subparagraph 1 sets a fixed number of officers and employees for the Senate and House of Representatives. The following change is proposed by Senate Bill No. 488:

"The total number of officers and employees of the senate shall be determined by a resolution of the senate and the total number of officers and employees of the house of representatives shall be determined by resolution of the house."

The repealed subparagraph provided for a maximum number of officers and employees within the limits stated by Article III,

Honorable Warren E. Hearnes

Section 17 of the Missouri Constitution. The repeal of that subsection and the language of its substitute, permitting the General Assembly to determine by resolution the total number of its officers and employees, indicates a legislative intent to employ more personnel than authorized by Article III, Section 17 of the Missouri Constitution.

The constitutionality of the above-quoted provision is determined by two provisions of the Constitution of Missouri. Article III, Section 17 of the Missouri Constitution, adopted in 1970, states:

"Until otherwise provided by law, the house of representatives shall not employ more than one hundred twenty-five and the senate shall not employ more than seventy-five employees elective, appointive or any other at any time during any session." (Emphasis added)

Article III, Section 21 of the Missouri Constitution provides, in relevant part:

"The style of the laws of this state shall be 'Be it enacted by the General Assembly of the State of Missouri, as follows.' No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose. . . ." (Emphasis added)

The decision of Bohrer v. Toberman, 227 S.W.2d 719 (Mo.banc 1950) discussed, in a matter different from the one at hand, the relationship of resolutions to legislation. The decision observed that normally legislative action is equated to statutory enactment. It went on to uphold the use of the concurrent resolution as a device for achieving a temporary legislative purpose, such as the calling of a particular election and affixing the date thereof. However, the decision never equated a bill to a resolution as identical devices for achieving legislative goals. The court observed:

". . . The Constitution is not a grant, but a restriction upon the power of the Legislature, and hence an express enumeration of legislative powers and privileges in the Constitution cannot be considered as the exclusion of others not named unless accompanied by negative terms. . . ." (at 723) (Emphasis added)

The court further stated:

Honorable Warren E. Hearnes

". . . But it is clear that the forms in which some of the proceedings of the General Assembly may be expressed (except laws) are not limited to bills. . . ." (at 723)

In another decision it was stated that the legislature may supplement constitutional provisions only by the enactment of measures consistent with the limitations of the Constitution. State v. Blair, 270 S.W.2d 1 (Mo.banc 1954).

The constitutional provisions previously quoted, and the interpretation of the legislative process provided by the Bohrer decision compel the conclusion that Senate Bill No. 488, purporting to authorize the General Assembly to increase the total number of officers and employees beyond the constitutional limit by resolution, is unconstitutional. Article III, Section 17 of the Missouri Constitution requires any increase in the number of legislative officers and employees above the number specified by that provision to be provided for "by law." Section 21 of Article III specifically states that no law can be passed, except by bill.

A similar conclusion is stated in 81 C.J.S., States, Section 49 (1953):

"Except as restrained by constitutional limitations, the legislature may appoint or elect its own officers or employees, and such authority is sometimes expressly defined by statute. Where the constitution provides that the legislature shall prescribe by law the number, duties, and compensation of the officers and employees of each house, and requires that laws shall be passed by bill, statutes authorizing each house of the legislature to fix merely by resolution the number of subordinate officers and clerks of each house are invalid." (at 967) (citing Hall v. Blan, 148 So. 601 (Ala. 1933)).

CONCLUSION

It is the opinion of this office that Senate Bill No. 488 of the Second Regular Session of the 76th General Assembly is unconstitutional because it authorizes the Senate and House of Representatives to determine, by resolution, the number of their officers and employees in excess of the limitations imposed by Article III, Section 17 of the Missouri Constitution.

Honorable Warren E. Hearnes

The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General