

2927.

GENERAL ASSEMBLY—MEMBERS NOT ENTITLED TO MILEAGE FOR WEEKS ASSEMBLY IN RECESS—ADJOURNMENT BY GOVERNOR TO FUTURE DATE INTERVENING SPECIAL SESSION—EFFECT ON PENDING LEGISLATION—MILEAGE FOR SPECIAL SESSION.

SYLLABUS:

1. *When the General Assembly is in session and is declared adjourned to a future date by the Governor of Ohio by virtue of the power vested in him by Article III, Section 9 of the Constitution, and subsequent thereto and while the General Assembly stands adjourned as aforesaid, the Governor of Ohio again convenes the General Assembly in special session by proclamation, after the adjournment of the last mentioned session, the General Assembly is still in the session next preceding, and any legislation which may have been left incomplete at the time of adjournment first mentioned is still pending.*

2. *Members of the General Assembly are not entitled to mileage for the weeks the assembly is in recess. Opinions of the Attorney General for 1919, Vol. I, page 587, approved and followed.*

3. *When the General Assembly in session stands adjourned to a future date and during such adjournment convenes in special session pursuant to a proclamation of the Governor, each member of the assembly shall receive weekly mileage during the time that the General Assembly is actually sitting and transacting business in such special session.*

COLUMBUS, OHIO, July 16, 1934.

HON. FRANK CAVE, *Speaker, House of Representatives, Columbus, Ohio.*

DEAR SIR:—The resolution passed by the House of Representatives requesting an opinion of the Attorney General relative to the recess status of the 90th General Assembly and of pending legislation, reads as follows:

“1. Is legislation left incomplete at the close of the General Assembly on May 4, 1934, still pending and what will be the status of the General Assembly after adjournment following the third special session?

2. Are the members of the Ninetieth General Assembly entitled to mileage during the time the General Assembly is recessed by virtue of Governor White's message of May 4, 1934?”

Article III, Section 8 of the Constitution of Ohio reads as follows:

“The governor on extraordinary occasions may convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation, or message to the general assembly issued by the governor during said special session, but the general assembly may provide for the expenses of the session and other matter incidental thereto.”

Under the authority granted thereby, the Governor issued the following proclamation calling the General Assembly into session on the 6th day of December, 1933, to consider certain matters set out in said proclamation:

"State of Ohio
Executive Department
Office of the Governor
Columbus

PROCLAMATION

Under authority granted by article 3, section 8, of the constitution of the state of Ohio, the governor thereof is authorized in such cases of emergency, of which he is the judge, to call the general assembly of the state of Ohio into special session.

In my judgment, as governor of the state, an emergency has arisen wherein the voters by an overwhelming plurality, chose that our state should, in cooperation with the repeal of the 18th amendment to the federal constitution and the repeal of the so-called prohibition amendment to the constitution of Ohio, adopt a proper form of taxation and control of the traffic in alcoholic beverages in the state of Ohio.

Having, therefore, in mind the expression of the will of the people of our state, it becomes my duty to summon into special session the general assembly of Ohio.

Now, therefore, I, George White, governor of Ohio, by virtue of the authority vested in me, hereby order that the general assembly of the state of Ohio convene in extraordinary session at the capitol in the city of Columbus, at one o'clock p. m., Wednesday, December 6th, 1933, then and there to give consideration to legislation affecting the following matters and none others to wit.

The consideration and passage of such legislation as may be deemed proper to tax, regulate and control within the state of Ohio, the manufacture, possession, use and traffic in, malt, spirituous and vinous liquors within the state of Ohio.

In testimony whereof, I have hereunto subscribed my name and caused the great seal of the state of Ohio to be affixed at Columbus, this twenty-fourth day of November in the year of our Lord, one thousand nine hundred and thirty-three.

GEORGE WHITE,
Governor."

Pursuant thereto the General Assembly met in second special session. During said special session, numerous messages were issued by the Governor to the General Assembly touching various matters, which matters were considered by the Assembly and a considerable amount of legislation in regard thereto was left incomplete on the date of adjournment of said session pursuant to the Governor's message.

Article III, Section 9 of the Ohio Constitution provides that the Governor, in case of disagreement between the two houses in respect to the time of adjournment, shall have power to adjourn the General Assembly to such time as he may think proper, but not beyond the regular meetings thereof. It appearing that the Senate and the House of Representatives in special session pursuant to the call

issued as aforesaid by the Governor had failed to agree in respect to the time of adjournment and a disagreement having existed between the two houses on the 4th day of May, 1934, with respect to such time of adjournment, the Governor issued the following message to the members of the 90th General Assembly:

"State of Ohio
Executive Department
Office of the Governor
Columbus

To the Members of the Ninetieth General Assembly in Special Session:

Whereas, the Senate and the House of Representatives now in special session have failed to agree in respect to the time of adjournment, and it clearly appearing that a disagreement now exists between the two houses in respect to such time of adjournment within the purview of 'article 3, section 9, of the constitution of the state of Ohio'; therefore,

I, George White, governor of the state of Ohio, by virtue of the power vested in me by the constitution of the state of Ohio, do hereby declare the Ninetieth General Assembly to be adjourned until Tuesday, the 19th of November, 1934.

In Testimony Whereof, I have hereunto subscribed my name and caused the great seal of the state of Ohio to be affixed hereto at Columbus, this fourth day of May in the year of our Lord, one thousand nine hundred and thirty-four.

GEORGE WHITE,
Governor."

In accordance with said message, the General Assembly adjourned until Tuesday, November 19, 1934.

On June 27, 1934, the General Assembly met in third special session pursuant to a call issued by the Governor in accordance with Article III, section 8 of the Ohio Constitution. The Constitution of Ohio contains certain provisions by which the power is conferred upon the Governor to convene the General Assembly on extraordinary occasions by proclamation. The question of the existence of an extraordinary occasion of sufficient gravity to justify a call for an extraordinary session of the General Assembly is to be determined by the Governor as a sworn officer and his discretion is not subject to challenge or review by the courts. In the instant case, the General Assembly, after having met pursuant to the proclamation of the Governor, considered certain legislation germane to the subjects for which it was called, introduced bills and passed certain measures. It can, therefore, be reasonably assumed that the General Assembly by its conduct in regard thereto felt that an emergency existed and that the occasion was of an extraordinary nature.

The Governor has no control over the time of adjournment of the two houses except in case of disagreement and in the matter before us there clearly was a disagreement as to adjournment. The second special session now stands adjourned until November 19, 1934. At pages 111 and 112 of Hughes' American Parliamentary Guide, it is stated:

"(B) Adjournment is the act by which an assembly suspends its sittings. * * *

(C) An adjourned meeting except one by sine die (without day) is simply a continuation of a sitting of which it is in adjournment. * * *

(D) Adjournment does not dissolve the assembly except when no provision has been made for a future sitting. * * *"

Therefore, in the case before us, the General Assembly not having finally adjourned, that body was still in second special session on June 16, 1934, the date of the Governor's proclamation calling it into third special session on June 27, 1934, and likewise it was still in second special session on June 27, 1934, the date of its meeting pursuant to said call.

This brings us definitely to the proposition as to whether or not the convening of the General Assembly in third special session within the second special session terminated the second special session.

The framers of the Constitution of Ohio foresaw the necessity of calling the General Assembly into session in an emergency. The Constitution provides that when the General Assembly is called in special session, it shall consider no other business than that named in the Governor's proclamation. In view of this provision and in consideration of the fact that it can reasonably be foreseen that an emergency of sufficient gravity to warrant the calling of the General Assembly into session might arise at any time, such general powers were conferred upon the Governor by the Constitution which permit him to convene the General Assembly on any extraordinary occasion, whether or not that body be recessed or adjourned on such occasion. The power conferred upon him in regard thereto is not qualified or limited in any manner whatsoever.

In view of the constitutional provision, the Governor, if he found that an extraordinary occasion had arisen with reference to the building and loan institutions of the state, at a time when the General Assembly was recessed, had no other course open to him but to call a special session of the General Assembly.

There is no power conferred on the Governor to terminate a session of the General Assembly. This power rests with the General Assembly alone. Article III, Section 9 of the Ohio Constitution, which provides that the Governor shall have the power in case of disagreement between the two houses in respect to the time of adjournment, to adjourn the General Assembly, states that he may do so to such time as he may think proper *but not beyond the regular meetings thereof*. To adjourn the General Assembly to a time beyond the regular meetings thereof would be tantamount to a dissolution of that body and therefore Article III, Section 9 of the Constitution places a limitation on the power of the Governor with reference to adjournment of the General Assembly and prohibits any act on his part with reference thereto which would result in a dissolution of the assembly. Therefore, if the calling of the special session of the General Assembly at a time when that body stands adjourned to a future date would terminate the session of which it is in adjournment, the Governor could indirectly accomplish that which the Constitution impliedly prohibits.

I come now to the question of whether or not the members of the 90th General Assembly are entitled to mileage during the time the General Assembly is recessed by virtue of the Governor's message of May 4.

An opinion on this precise matter was requested from the Attorney General by the Auditor of State in 1919, at which time the Attorney General was of the opinion that the word "session" as used in connection with the payment of mileage meant "the actual assembly of the members actually sitting for the transaction of business" and therefore precludes the right to receive mileage

during a recess of one week or more when there is no actual assembly of the members and the members are at their homes. Opinions of the Attorney General for 1919, Vol. I, page 587.

Section 50 of the General Code of Ohio provides in part that "Each member (of the General Assembly) shall receive the legal rate of railroad transportation each way for mileage once a week during the session from and to his place of residence". In the matter here before me, the General Assembly met in third special session on June 27, 1934, during a recess of the second special session, at which time the assembly actually sat for three days for the transaction of business. As stated above, the word "session" as used in the above connection means "the actual assembly of the members actually sitting for the transaction of business."

In view of the above statutory provision, it is my opinion that the members of the 90th General Assembly are entitled to mileage for the week ending June 30, 1934. However, in regard to the question of mileage during a recess, I am of the same opinion as my predecessor in office, to wit, that the members of the General Assembly are not entitled to mileage each week during the recess of the second special session from May 4, 1934, to November 19, 1934, with the exception of one week's mileage for the time the members of the General Assembly were actually sitting in third special session June 27 to June 29, 1934.

Summarizing, it is my opinion that:

1. The 90th General Assembly is now in its second special session (in recess in accordance with the adjournment message of May 4, 1934).

2. All legislation left incomplete on the date of adjournment, to wit, May 4, 1934, is still pending and may be taken up in its present state on November 19, 1934, when the General Assembly reconvenes in second special session.

3. The members of the 90th General Assembly are not entitled to mileage during the time the assembly is recessed.

4. When the General Assembly in session stands adjourned to a future date and during such adjournment convenes in special session pursuant to a proclamation of the Governor, each member of the assembly shall receive weekly mileage during the time that the General Assembly is actually sitting and transacting business in such special session.

Respectfully,

JOHN W. BRICKER.

Attorney General.

2928.

LIQUID FUEL TAX—DISTRIBUTION TO SCHOOL DISTRICT ON BASIS OF AVERAGE DAILY ATTENDANCE DURING PRECEDING YEAR. ADMISSION OF PUPILS FROM ANOTHER SCHOOL DISTRICT BY BOARD OF EDUCATION.

SYLLABUS:

1. *After deducting from the proceeds of the liquid fuel tax provided for by Sections 5542-1, et seq., of the General Code of Ohio, the requirements of a rotary fund and the cost of administration as provided for by Section 5542-18, General Code, the balance of said proceeds should be distributed to the several school dis-*