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GOVERNOR — GENERAL ASSEMBLY — WHEN GOVERNOR UNDER AUTHORITY OF ARTICLE III, SECTION 8, CONSTITUTION OF OHIO, CONVENES BY PROCLAMATION, SPECIAL SESSION OF GENERAL ASSEMBLY — GOVERNOR CAN NOT BY SUCH PROCLAMATION PRESCRIBE MANNER IN WHICH GENERAL ASSEMBLY SHALL DISPOSE OF SUBJECT OR SUBJECTS EMBRACED WITHIN PROCLAMATION.

## SYLLABUS:

When the Governor, under the authority of section 8 of Article III of the Constitution of Ohio, convenes by proclamation, a special session of the General Assembly, he cannot by such proclamation prescribe the manner in which the General Assembly shall dispose of the subject or subjects embraced within such proclamation.

Columbus, Ohio, August 28, 1945

Hon. Frank J. Lausche Governor of Ohio  
Columbus, Ohio

Dear Governor Lausche:

This will acknowledge receipt of your communication which reads as follows:

"I have been considering calling the 96th General Assembly into special session solely for the purpose of adopting legislation that will make immediately effective the provisions of law contained in Amended Substitute Senate Bill #163, adopted by the General Assembly on July 6, 1945 and signed by me on July 11, 1945.

Inasmuch as no clause declaring an emergency was written into Amended Substitute Senate Bill #163, that bill does not become law until October 12, 1945.

It is my thought that if the Assembly is called into special session, that it should not consider any aspect of that bill except the writing into it of such provisions as will make the bill immediately effective instead of deferring its effective date for a period of 90 days.

I am therefore requesting you to submit to me your opinion regarding the limitations that I can place on the extent of action

that the Legislature might take in the event they are called into special session as above set forth."

The provisions of law conferring power on the Governor to convene the General Assembly in special session are set out in section 8 of Article III of the Constitution of Ohio, and read 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 matters incidental thereto."

In determining the answer to your question, the above provisions must be considered in light of those contained in section 1 of Article II of the Constitution, wherein it is provided:

"The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives \* \* \*."

By the above language, the people in whom, by the terms of section 2 of Article I of the Constitution, all political power is inherent, committed to the General Assembly the entire lawmaking power of the state subject only to those limitations placed upon it by the people themselves. In other words, the legislative power vested in the General Assembly, except where either the federal or state constitution has imposed limits upon it, is practically absolute.

Consequently, since the only restraints upon the exercise of legislative prerogatives are those contained in the constitutions of our state and nation, it would appear that unless inhibited from doing so by constitutional provisions, the General Assembly when convened in special session is free to determine what any legislation falling within the purpose of the call, should be.

The only provisions contained in our constitution which operate as a limitation on the exercise of the powers of the General Assembly in this respect are those set out in section 8 of Article III, supra, to-wit, that

“no other business shall be transacted at such special session except that named in the proclamation.”

In construing the word “purpose” as the same appears in section 8 of Article III of the Constitution, it must be borne in mind that the Governor is not a part of the lawmaking body. As above pointed out, the power of the General Assembly to enact laws when convened in regular session is plenary, except in so far as the Constitution has limited it.

Section 7 of Article III of the Constitution of Ohio provides that the Governor shall recommend to the General Assembly at every session, such measures as he shall deem expedient. Obviously, this does not authorize the Governor to suggest in detail the legislation desired or obligate the General Assembly to follow such a suggestion if made.

Therefore, if the authority of the Governor is limited to recommending measures for its consideration, when the General Assembly is in regular session, it would seem to follow that his authority is likewise so limited when that body is called into special session by his proclamation.

In *State, ex rel. v. Braden*, 125 O. S. 307, it is stated by Jones, J., who delivered the opinion of the court, (pages 313 and 314):

“The provision of the Constitution is mandatory, and the Legislature is not empowered to legislate upon any subject except such as may be indicated in the proclamation, or which is germane or incidental to the general purpose stated in the proclamation; and the Governor, in his proclamation, can limit the business which the Legislature may consider. Manifestly the proclamation is not intended to invade the province of the Legislature by detailing the particular subjects of relief and the particular method to be employed therefor, or to minutely specify how much or in what proportion the excise tax collected should be allocated to the counties, or how and in what time the bonds issued by the political subdivision should be retired. These particular matters fall within the functions of the legislative power, and the proclamation was not intended to control these details so long as the Legislature hewed to the line of the purposes mentioned in the proclamation.”

In commenting on the power of the Governor with respect to legislation to be considered at a special session of the legislative assembly of that state, the Supreme Court of Montana, in *State, ex rel. v. Clancy*,

30 Montana, 529, speaking through Mr. Justice Holloway, said (page 535):

“The utmost extent of the governor’s authority, so far as constructive legislative work is concerned, is to recommend such measures as he shall deem expedient (Section 10, Article VII, Constitution); but there is not any legal or moral obligation resting upon the members of the legislative assembly to follow such recommendations, if they deem them unwise or the measures indorsed inexpedient. When the exigencies of the times require it, the legislature may be called in extraordinary session by the governor to consider particular subjects of legislation. Those subjects must be enumerated in the proclamation or in the governor’s message to the assembly, and the power of the legislature is limited to enacting laws affecting those subjects only. (Section 11, Art. VII, above). In other words, the governor may submit the subjects with reference to which legislation is desired, but the lawmaking body then has absolute power to construct such laws respecting those subjects as it shall see fit (unless restrained by constitutional inhibition), or to disregard the subjects altogether and not enact any measures respecting them.

The governor has the same authority at a special session of the legislature that he has at a regular session—to recommend any particular measures which he may deem expedient; but such recommendation does not measure or limit the legislative authority. That authority is only limited by the scope of the subjects submitted for consideration, and any recommendation respecting a particular measure would not be binding upon the legislative assembly.”

The pertinent provisions of the Constitution of Montana which are almost identical to those contained in the Ohio Constitution, read as follows:

“He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purpose for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto.”

To the same effect is the language contained in the opinion of the Supreme Court of Pennsylvania in *In re Likins*, 223 Pa., 456, wherein it is declared:

“\* \* \* Although a Governor who has decided to convene a special session of the Legislature is empowered to proclaim, to indicate, to designate, the subjects for legislative consideration at such session, he cannot by his proclamation, any more than he can by his message to the same body when in regular session, prescribe or limit the manner in which or the extent to which the Legislature may dispose of those subjects which he designates in his proclamation as matters for legislative consideration.”

See also *Sims v. Weldon*, 165 Ark. 13; *State v. Woolen*, 128 Tenn., 456  
Ex parte *Fulton*, 86 Tex. Cr. 149.

It is therefore apparent that although the Governor, when the General Assembly is called into special session, may limit the subjects of legislation, he may not dictate the details of the legislation which may be enacted on those subjects. In *State, ex rel. Clancy*, supra, it was said:

“He (the governor) cannot in advance tie the hands of the legislature. He cannot submit the draft of a proposed bill, and direct the legislature to enact it, or no measure at all \* \* \*.”

(Parenthetical matter added.)

An attempt to limit the General Assembly to a consideration of writing into an act already passed by it but which has not yet become effective, provisions that will make such act immediately effective, would clearly be tantamount to submitting to that body the draft of a proposed bill with directions to enact it, or no measure at all. To say to the General Assembly “Here is an act complete in its provisions, you may either pass it as an emergency or enact nothing,” would certainly deny to that body which, by the Constitution is clothed with all the legislative power of the state, and which is free to determine in what manner the purpose of the call for a special session is to be carried into effect, the exercise of its legislative discretion.

Therefore, since it is not within the province of the Governor to dictate the passage of any particular measure, it would appear, and it is accordingly my opinion, that the purpose for which the General Assembly is convened in special session may not be limited to the consideration of writing into an act passed by it in general session and which is not yet effective, provisions which would make such act immediately effective.

Respectfully,

HUGH S. JENKINS

Attorney General