

OPINION NO. 73-093

Syllabus:

The amendment to Article II, Section 8, Ohio Constitution, became effective immediately upon approval by the majority of voters on May 8, 1973, and applies to the current session of the General Assembly. Under this provision and R.C. 101.75, lobbyists are required to file statements of receipts and expenditures after both the first and the second annual regular sessions of the General Assembly, including the current one.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, September 17, 1973

Your request for my opinion reads as follows:

I have been asked by a registered lobbyist whether it will be necessary to file the statement of receipts and expenditures required under Section 101.75 of the Ohio Revised Code following the adjournment of the first regular session in 1973 of the 110th General Assembly.

This section requires such a filing

within thirty days after the final adjournment of any session of the General Assembly (Emphasis added)

At the May 8, 1973, election, Issue No. 6 was approved by the voters of the state. As one of its provisions, this question amended Article II, Section 8, of the Ohio Constitution to provide as follows:

Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year (Emphasis added)

Section 101.75, supra, was in effect under the previous Constitutional provision on this subject which provided for only one

session of each General Assembly, in addition to specially called sessions of the legislature. Statements of receipts and expenditures were required to be filed after each General Assembly had adjourned sine die and also after each special session of the legislature.

In view of the Constitutional amendment, may I now have your opinion as to whether registered lobbyists will now be required to file a statement of receipts and expenditures following the "first regular session" and following the "second regular session" of each General Assembly. Adjournment of the first regular session of the 110th General Assembly appears imminent; and therefore, I would hope to receive your answer as soon as possible.

Your question concerns the effect of the recent amendment of Article II, Section 8, of the Constitution. Prior to the amendment each General Assembly met biennially in one regular session. Now, each General Assembly is to convene in two yearly sessions, each beginning on the first Monday of January in successive years. You ask what effect this change has on the provision of P.C. 101.75, under which registered lobbyists are required to file a statement of receipts and expenditures within thirty days after final adjournment of "any session" of the General Assembly.

The answer is by no means an easy one. There are, of course, "regular" sessions and "special" sessions, but, beyond that, there is no statutory definition of the term "session," and I can find very little assistance in the case reports or in the opinions of my predecessors. It is clear that the beginning of a regular session is set by statute, and that a special session is called by the Governor and begins on a date set by him. *State v. Harmon*, 31 Ohio St. 250, 262 (1877). But the date of final adjournment is not so clear. For instance, a regular session of the General Assembly can create an investigative commission for legislative purposes, composed largely of its own members, which continues in existence after a sine die adjournment and reports its findings to the next session of the Assembly. *State v. Morgan*, 164 Ohio St. 529, 533-535 (1956); 120 Ohio Laws, 693-695. Furthermore, a special session called by the Governor can be temporarily adjourned, and a new special session can be called and finally adjourned during the recess of the original special session. Opinion No. 2927, Opinions of the Attorney General for 1934. This is complicated by the recently adopted Amended House Bill No. 994, by which P.C. 3.03 and P.C. 101.01, together with a number of other sections of the Revised Code, have been amended to make the second regular session of the General Assembly a continuance of the first regular session.

I am inclined to think, however, that none of these considerations have any effect upon the requirements of P.C. 101.75 that a lobbyist's statement be filed after final adjournment of "any session." In the original enactment of that section, the General Assembly can hardly be said to have had under consideration the possibility of either a continuing investigative

commission or a session within a session. A statute must, of course, be construed to give effect to the intention of the enacting legislature. Mumhrevs v. Minons Co., 165 Ohio St. 45, 50-57 (1956) Opinion No. 73-075, Opinions of the Attorney General for 1973. The plain language of R.C. 101.75 is that a lobbyist's statement must be filed thirty days after final adjournment of any session. I think the General Assembly must have meant that the statement must be filed after any regular session has been adjourned sine die or to a date certain in the following year, State, ex rel. Slater v. Johnson, 9 Ohio C.C.R. (n.s.) 525 (1906), or after all pending special sessions have been adjourned sine die. If the General Assembly had intended to change this it would have amended R.C. 101.75 at the time it amended R.C. 3.03, 101.01, and other related sections.

It may be asked whether amended Article II, Section 8, applies to the current session of the General Assembly. By the terms of the Resolution, the amendment was to take effect immediately upon adoption by the majority of the electorate. Such would also be the case in the absence of any provision concerning the effective date. Euclid v. Neaton, 15 Ohio St. 2d 65 (1960); McNamara v. Campbell, 94 Ohio St. 403 (1916).

However, this fact alone does not answer the question of whether the amendment applies to the current session. The reason is that the session had already convened when the amendment took effect. Thus, it might be argued that a two-year session had convened and an attempted change to a one-year session would alter something which had already occurred. In Ohio, it is a generally accepted rule of law that constitutions and their amendments are to be considered prospective in operation unless a contrary intention is manifested. Puckeye Churn Co. v. Abbot, 115 Ohio St. 152 (1926); State ex rel. Pardee v. Pattison, 73 Ohio St. 305 (1906). Arguably, a construction of an amendment which applied it to a session already underway would be retroactive, and therefore would not be favored absent an expressed intent to that effect. Under this line of reasoning, the current session of the General Assembly would continue for two years, and the amendment in question would apply to the session beginning in 1975.

To be considered retroactive (or retrospective), however, an amendment or statute must do more than merely have some effect upon transactions already past. It must have a particular type of effect. In State, ex rel. Crotty v. Fangerle, 133 Ohio St. 532, 535 (1938), the Supreme Court of Ohio stated, quoting from Commissioners v. Rosche Pros., 50 Ohio St. 103 (1893), as follows:

* * * every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed retrospective.

That decision held a statute invalid because, inter alia, it was a retroactive law prohibited by Article II, Section 28, Ohio Constitution. The Court further explained the meaning of that term at 133 Ohio St. 535, again quoting from Commissioners v. Rosche Pros., supra:

However every statute that is designed to act retrospectively is not retroactive within the terms of Section 28, of Article II, of the Constitution of 1851, which forbids the General Assembly of this state to pass retroactive laws. Whether a statute falls within the prohibition of this provision of the Constitution depends upon the character of the relief that it provides. If it creates a new right, rather than affords a new remedy to enforce an existing right, it is prohibited by this clause of the Constitution of this state.

The statute in question imposed a duty upon Hamilton County to refund certain tax payments which the plaintiffs had paid voluntarily, because of a ministerial error in assessing the tax, several years previously. Before the passage of the statute, the plaintiffs had no right to such refund, either under statute or common law. Hence, the Court held that the statute was not remedial in the sense of providing a more appropriate remedy than the law before afforded, to enforce an existing right or obligation. Instead, it imposed upon the defendants an obligation that did not attach to the transaction when it occurred. Consequently, the statute was retroactive, hence unconstitutional. 133 Ohio St. 536.

By analogy, the amendment to Article II, Section 8, is retroactive only if it takes away or impairs vested rights, or creates a new obligation. The question then arises, if the amendment requires lobbyists to file statements after this year's adjournment, whereas previous law required such filing only after the adjournment of next year's session, does it not create a new obligation with respect to past transactions?

The answer to this question becomes apparent upon close examination. Lobbyists were required to keep records of their receipts and expenditures and file statements under previous law. The amendment did not change their duties to be performed prior to its effective date, which duties were the keeping of records upon which to base their statements. The only change was with respect to their duties subsequent to the effective date, which duties include the filing of statements at the end of the session. Thus, the effect of the amendment is merely to shorten the future time limitation for filing statement from two years to one year. Consequently, the new obligation imposed upon lobbyists was purely prospective, and therefore the amendment is not retroactive on this basis.

In specific answer to your question, it is my opinion and you are so advised that the amendment to Article II, Section 8, Ohio Constitution, became effective immediately upon approval by the majority of voters on May 8, 1973, and applies to the current session of the General Assembly. Under this provisions and R.C. 101.75, lobbyists are required to file statements of receipts and expenditures after both the first and the second annual regular sessions of the General Assembly, including the current one.