

in proper legal form and when the same is properly executed it will constitute a valid and binding contract.

Said proposed contract is being returned herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5090.

APPROVAL—PROPOSED AGREEMENT FOR ELIMINATION  
OF GRADE CROSSING IN CLARK COUNTY, OHIO—DE-  
TROIT, TOLEDO AND IRONTON RAILROAD COMPANY.

COLUMBUS, OHIO, January 10, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration a proposed agreement by and between the Director of Highways and the Detroit, Toledo and Ironton Railroad Company, covering the elimination of the grade crossing over the tracks of said company on State Highway No. 197, located at a point in Clark County, Ohio, known as Thorps Crossing.

After examination, it is my opinion that said proposed agreement is in proper legal form and when the same is properly executed it will constitute a valid and binding contract.

Said proposed contract is being returned herewith.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

5091.

CONSTITUTIONAL AMENDMENT—GENERAL ASSEMBLY IN  
SPECIAL SESSION MAY NOT PASS JOINT RESOLUTION  
SUBMITTING CONSTITUTIONAL AMENDMENT UNLESS  
AUTHORIZED BY GOVERNOR.

SYLLABUS:

*The General Assembly in special session has no authority to pass a joint resolution submitting a constitutional amendment in accordance with the provisions of Article XVI, Section 1 of the Constitution, unless such action is authorized by the proclamation of the Governor calling the General Assembly in special session or in a subsequent public proclamation or message to the General Assembly issued by the Governor during such special session, as provided by Article III, Section 8 of the Constitution.*

COLUMBUS, OHIO, January 13, 1936.

*Special Senate Committee on Welfare, Unemployment Insurance and Workmen's Compensation, Columbus, Ohio.*

GENTLEMEN: Your letter of recent date over the signature of your Chairman is as follows:

"Will you kindly render an opinion to the Senate Special Committee on Welfare, Unemployment Insurance and Workmen's Compensation, on the following question:

Is a proclamation or a message of the Governor necessary in order to have introduced in the Assembly and considered a joint resolution proposing an amendment to the State Constitution?

We will greatly appreciate a prompt ruling on this question."

Your inquiry is, in my judgment, answered by Article III, Section 8 of the Constitution, which is 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 incident thereto."

The limitation of the foregoing section upon the business that may be transacted by the General Assembly in special session has been held to be mandatory by the Supreme Court. The first branch of the syllabus of the case of *State, ex rel. v. Braden*, 125 O. S. 307, is as follows:

"The provisions of Section 8, Article III of the Ohio Constitution, requiring the governor when he convenes the General Assembly on extraordinary occasions, to 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,' etc., are mandatory; and the general assembly 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 therein; and in his proclamation, the governor can limit the business which the legislature may consider. \* \* \*

In the opinion of the court, speaking through Jones, J., at page 313, it is recognized that not only is the legislature without authority to legislate upon any subject except such as may be indicated in the proclamation or in a subsequent message from the Governor, but that the business which the legislature may consider is likewise limited. The language of the court is as follows:

“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.”

It is observed that the Constitution does not restrict the legislature while in special session as to legislation only which is named in a proclamation or message, but goes farther and restricts the legislature while in special session from transacting any business whatsoever except that named in the proclamation of the Governor or in any subsequent proclamation or message from him to the General Assembly.

I do not think it may be contended that a joint resolution authorizing the submission to the electors of a constitutional amendment in accordance with Article XVI, Section 1 of the Constitution is not business within the meaning of the term as used in Article III, Section 8 thereof, and it is accordingly my opinion that the General Assembly in special session has no authority to pass a joint resolution submitting a constitutional amendment in accordance with the provisions of Article XVI, Section 1 of the Constitution, unless such action is authorized by the proclamation of the Governor calling the General Assembly in special session or in a subsequent public proclamation or message to the General Assembly issued by the Governor during such special session, as provided by Article III, Section 8 of the Constitution.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*