

4557.

GENERAL ASSEMBLY—COMMITTEES THEREOF HAVE NO  
LEGAL EXISTENCE FOLLOWING SINE DIE ADJOURN-  
MENT.

SYLLABUS:

*The several select and special investigating committees appointed by authority of joint resolutions of the Senate and House of Representatives, or by authority of resolutions of either house of the 91st General Assembly, have no legal existence since the sine die adjournment of said assembly, nor have these committees at this time any power to act in pursuance of the resolutions creating them or to incur any expenses for any purpose, to be paid from the treasury of the State of Ohio.*

COLUMBUS, OHIO, August 19, 1935.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I respectfully request your written opinion upon the following question relative to the expense accounts of various members of the Senate and House of Representatives who are serving on committees created by the Ninety-first General Assembly which adjourned *sine die* on the 23rd day of May, 1935. Said Committees are operating to carry out the purpose of the resolutions creating them.

Question: Your opinion is requested as to the legality of honoring these vouchers presented for payment of traveling expenses of said members and the drawing of warrants on the State Treasury for same.”

During the regular session of the 91st General Assembly which adjourned *sine die* on the 23rd day of May, 1935, a number of “select” or special committees were appointed, some of them by authority of resolutions of the Senate, some by authority of resolutions of the House of Representatives, and others by authority of joint resolutions of both houses. These several committees were all vested by the terms of the resolutions authorizing or making the appointments, with power to investigate certain designated situations and conditions, and to obtain information with respect thereto, in any lawful manner and to that end to enforce the attendance and testimony of witnesses and the production of books, documents and papers. Some of these committees were expressly empowered to employ counsel, expert investigators, technical help,

clerical assistants and such other help as might be necessary. At least one of the committees, and possibly others, was expressly authorized to hold hearings "at any place or places within or without the State of Ohio."

Each of these committees was directed by the terms of the several resolutions to report their findings—some to the 91st General Assembly, some to the 92nd General Assembly, some to the 91st or 92nd General Assembly, some to the 91st or 92nd General Assembly and the Governor of Ohio, and one of the committees authorized to make an investigation of the natural gas resources within the State of Ohio and its relation to rates and to the cost of production, transportation, distribution and consumption of natural gas or artificial gas within the State of Ohio, was directed to make its report to the 91st or the 92nd General Assembly and to the Governor of Ohio and to the Public Utilities Commission of Ohio. Some of the committees were authorized to prepare legislation for presentation to the 91st or the 92nd General Assembly.

Each of the resolutions authorizing the appointment of the committee contained some provision with respect to the paying of the expenses of the committee. In some cases it was provided that these expenses be paid from special appropriations. In others it is provided that the expenses of the committee be paid from appropriations for that purpose made to the House of Representatives or to the Senate or from appropriations for joint committees.

In the General Appropriation Bill (H. B. 531) there is appropriated to the Senate under the heading:

"MAINTENANCE:	1935	1936
F 9. Legislative Committees .....	\$85,000	\$5,000
Joint Committees .....	18,000	1,500"
(General Appropriation Act, page 5.)		

Appropriations were made to the House of Representatives as follows:

"Maintenance—	1935	1936
F 9. Expense Legislative Committees.....	\$23,000	\$5,000"
(General Appropriation Act, page 7).		

Some of these appropriations were vetoed by the Governor, as follows:

#### "SENATE

F. 9. Legislative Committees, \$5,000.00 for the year 1936.  
 Joint Committees, \$18,000.00 for the year 1935, and \$1,500.00  
 for the year 1936." (General Appropriation Act, page 182)."

Special appropriations were made as follows:

“COMMITTEE FOR RECODIFICATION OF CONSERVATION LAWS—MAINTENANCE—

F. 9.

For the use of the Committee in carrying out the provisions of S. J. R. No. 10 adopted by the Legislature and filed in the office of the Secretary of State April 18, 1935 .....\$10,000.00

OHIO HIGHWAY SURVEY COMMITTEE  
MAINTENANCE—

F. 9.

For the use of the Committee in carrying out the provisions of S. J. R. No. 15 adopted by the Legislature and filed in the office of the Secretary of State March 12, 1935, for the payment of traveling expenses, clerical help, printing, postage and supplies .....\$10,000.00”  
(General Appropriation Act, page 161.)

The question presented by your inquiry involves the status of these several committees appointed by authority of the resolutions of the 91st General Assembly, either joint resolutions of both houses or resolutions of a single house after the *sine die* adjournment of said Assembly. If these committees do not have a legal existence since the *sine die* adjournment of the Assembly it clearly follows that no authority exists for the payment of any expenses incurred by the committees either for the members of the committees or for the employees of the several committees.

Although there is some conflict of authority in other jurisdictions as to the legal status of legislative committees after the *sine die* adjournment of the legislature which gives life to the committee, arising largely on account of different constitutional provisions in the said several jurisdictions, the law seems to be well settled in Ohio both by judicial pronouncement and precedents established by former attorneys general. In *State vs. Guilbert*, 75 O. S. 1, it is held that:

“The constitution of this state contains no express grant of power to either branch of the General Assembly to appoint a select investigating committee for general legislative purposes; and such power is not necessarily implied from the express grants to each house.”

In that case there was involved the status and legal existence of a committee appointed by authority of a resolution passed by a single house of the General

Assembly. It was implied in the decision of that case that such a committee might be appointed by joint action of both houses.

The question of the legal existence of such a committee after the *sine die* adjournment of the General Assembly was not involved in the Guilbert case. That question was directly presented in a later case. The question presented in this later case arose with respect to the powers of an investigating committee appointed by joint resolution of both houses.

In 1908, a joint resolution was passed by the General Assembly providing for the appointment of a committee to investigate charges of corruption in the government of the city of Cincinnati and the county of Hamilton. The resolution provided for the appointment of a committee of six, three from each house, with full power to investigate all matters and charges concerning corruption existing in the government of the city of Cincinnati and the county of Hamilton, and all matters and things in any way pertaining thereto. The committee was empowered to compel the production before it of any books and records, letters or documentary evidence of any character, which, in the judgment of the committee or a majority thereof, pertained to any matter or thing under investigation. It was also empowered to compel the attendance of any witnesses. It was directed to make report to the General Assembly if in session, and if not to the Governor for transmission to the succeeding General Assembly.

Suit in *quo warranto* was instituted in the Circuit Court of Hamilton County to oust the members of this committee from their positions, the said committee having assumed to act after the *sine die* adjournment of the Assembly whose joint resolution had provided for their appointment. Answers were filed by each of the defendants, setting up their appointment in pursuance of the resolution referred to. To each of these answers a demurrer was filed. The court held as shown by its journal entry in the case, being Case No. 4601 of the Circuit Court of Hamilton County:

“This cause came on to be heard on the demurrer of the plaintiff to the separate answers of the defendants, was argued by council and submitted to the court, on consideration whereof the court finds that the demurrer is well taken and should be sustained, and the defendants not desiring to plead further, the court further finds that the joint resolution referred to in the petition is unconstitutional, invalid and void, and that the defendants are unlawfully holding, intruding into and exercising the office of a special legislative committee as alleged in the petition, and should be ousted therefrom.

It is therefore ordered and adjudged that the said defendants and each of them be and they are hereby ousted and excluded from the said office and from all the privileges thereof, and that the relator recover from the said defendants the costs of this proceeding.”

In the course of the court's opinion, after discussing other questions raised by the pleadings, it was said :

"The question still arises whether the committee can act after the final adjournment of the General Assembly. The right to investigate and gather information in the manner here proposed exists, if at all, as an incident of and by implication from the power to legislate conferred by the Constitution. An act duly passed by the General Assembly is a complete exercise of the power to legislate; but a resolution to investigate for the purpose of further legislation, passed by the same body, is the exercise of a right incident to that power, and if the power itself be surrendered the incidental right goes with it.

When the General Assembly adjourned *sine die* its purpose to use the information in aid of legislation could no longer be carried out; and while it could order the information to be transmitted to its successor, it could not form or express a purpose for nor impose its own upon its successor. The latter would use the information as it saw fit, without regard to the intention of the former.

It is the same as if no purpose were expressed, and the result is that an investigation is proposed, without any legislative purpose or any other acknowledged purpose, with authority in the committee to roam over the entire field of governmental functions and report its discoveries to the next General Assembly fresh from the people who alone have power to instruct. Such power to investigate is not conferred by the Constitution in express terms nor by implication. *Cushing's L. & P. of Leg. Assemblies*, Section 496; *In re Pac. Ry. Co.*, 32 Fed., 241."

See *State ex rel. vs. Gayman*, 11 C. C. N. S., 257.

The judgment in this case was affirmed by the Supreme Court without opinion. Two of the judges, Price, P. J. and Crew, J., expressly stating in their concurrence that it was "on the sole ground that the committee appointed under the joint resolutions had no power to act after the final adjournment of the legislature, which could not reconvene of its own motion." See *Gayman et al. vs. State*, 79 O. S., 444.

The Guilbert case, *supra*, was decided in 1906. As stated above, the question of the legal existence of a legislative committee lawfully appointed in the first instance, after *sine die* adjournment of the Assembly which created it or authorized its creation was not involved in this case. The Gayman case, *supra*, in which that question was involved, was acted upon by the Supreme Court in 1909. Since that time, in 1912, Section 8 of Article II of the Constitution of Ohio was adopted. The only effect of this constitutional pro-

vision, in my opinion, is to authorize each house of the General Assembly to appoint committees with powers which formerly might have been granted to joint committees. The General Assembly is essentially a legislative body. It has no judicial or executive powers. Any information that it might be authorized to gather by means of a committee could be for no other purpose than for use in drafting legislation. The language of the constitutional provision referred to above, clearly bears out the idea that the only purpose for which such committees may be appointed is for obtaining information "affecting legislative action under consideration or in contemplation." The full text of this constitutional provision is as follows:

"Each house, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and shall have all powers necessary to provide for its safety and the undisturbed transaction of its business, and to obtain, through committees or otherwise, information affecting legislative action under consideration or in contemplation, or with reference to any alleged breach of its privileges or misconduct of its members, and to that end to enforce the attendance and testimony of witnesses, and the production of books and papers."

It is a familiar principle of law that a grant of power whether by constitutional provision or statute is a limitation on that power. Surely a legislative body that has ceased to function by reason of a *sine die* adjournment cannot thereafter have any legislation "under consideration or in contemplation." As stated in the meager report of the Gayman case, *supra*, in the Supreme Court, it cannot "reconvene of its own motion." It is true that a legislature may be reconvened on extraordinary occasions by gubernatorial call for the transaction of business made necessary by the "extraordinary occasion" (Article III, Section 8 of the Constitution of Ohio) at least that is the manifest intent involved in the grant of power to the Governor to call extra sessions. It is paradoxical to say that any specific legislation to meet an "extraordinary occasion" which may arise in the future can be in contemplation weeks and perhaps months before the "extra-ordinary occasion" occurs.

A former Attorney General, since the adoption of Section 8 of Article II of the Constitution of Ohio in its present form, in an opinion which dealt with the legal existence of a legislative committee ostensibly charged with the duty of functioning after the *sine die* adjournment of the General Assembly, said with reference thereto:

"It is apparent that this committee will not in any sense be a

committee of the present General Assembly for the reason that it will, in all likelihood, and in point of fact, to a certainty, discharge its functions after the adjournment of the present general assembly *sine die*. \* \*

In the case of *State ex rel. vs. Gayman*, 11 C. C. (n. s.) 257, it was held that a legislative committee, as such, has no authority or legal existence after the adjournment of the general assembly *sine die*. The effect of this decision, which was affirmed without report by the Supreme Court, was not altered, in my opinion, by the amendment in 1912 of article II, section 8, of the Constitution. This section, as amended, so enlarges the powers of each house of the general assembly as to authorize such house 'to obtain, through committees, or otherwise, information affecting legislative action under consideration or in contemplation \* \*'. It was adopted to overthrow the restrictive rule as to the separate power of the respective houses, laid down in *State ex rel. vs. Guilbert*, 75 O. S., 1, but it does not in any way affect the rule of the *Gayman* case.

It follows that inasmuch as the joint resolution clearly contemplates the doing of work by this committee, after the adjournment of the general assembly *sine die*, it must be held either that the committee contemplated by the legislature is not a 'legislative committee' or, if it is to be regarded as a legislative committee, the object contemplated by the joint resolution cannot be achieved because beyond the power of the general assembly."

See *Opinions of the Attorney General for 1917*, page 206.

In a later opinion by another Attorney General there was involved the legal status of an investigation committee to investigate conditions at the Ohio Penitentiary appointed by authority of a Senate resolution of the 84th General Assembly. It was held as stated in the syllabus of this opinion:

"The adoption of Senate Resolution No. 58 by the Senate on May 27, 1921, was a constitutional exercise of the power conferred on that body by Section 8 of Article II of the Ohio Constitution.

The committee appointed under Senate Resolution No. 58 *supra*, has authority to function until the final or *sine die* adjournment of the present General Assembly." See *Opinions of the Attorney General for 1921*, page 524.

The question of the right of this committee to function after the *sine die* adjournment of the Assembly was not directly involved in the opinion. The legislature was then in recess brought about by reason of its having been

prorogued by the Governor to a certain definite date. The Attorney General commented on the question in said Opinion, however, as follows:

“The authority of the committee appointed under and pursuant to the authority of Senate Resolution No. 58, to function during the present adjournment of the general assembly, is not, in my opinion, open to serious doubt. While *State vs. Guilbert*, supra, and *State vs. Gayman*, 11 C. C. (n. s.) 257 (affirmed without report, 79 O. S., 444) might, in a proper case, be said to support the general proposition that a legislative committee appointed under a resolution cannot function after the adjournment of the general assembly, it must not be overlooked that the courts in those cases were speaking with reference to final or *sine die* adjournments. See also 1920 Opinions of Attorney General, Vol. I, page 194, 196. Such an adjournment is not now involved. On the contrary the adjournment we are dealing with is one effected by the governor in the exercise of the power vested in him by section 9, Article III, Ohio constitution, and in the proclamation issued by the governor the time to which the general assembly has been adjourned is fixed at December 30, 1922.”

In the light of the authorities discussed above, no other conclusion seems to be possible than that these several select or special committees here under consideration, whether appointed by authority of joint resolutions or resolutions of a single house of the 91st General Assembly, do not now have a legal existence, the legislature authorizing their appointment having adjourned *sine die* on May 23, 1935, and of course, it follows that they have no authority to incur expenses to be paid from public funds for any purpose.

I am therefore of the opinion in specific answer to your question that you are without authority to honor vouchers for and draw warrants on the treasury for the payment of the traveling expenses of the members of these several committees, which expenses were incurred subsequent to May 23, 1935.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*