



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 92

The Honorable Eric Yost
State Senator, Thirtieth District
3015 Longfellow Court
Wichita, Kansas 67226

Re: Constitution of the State of Kansas--Executive--
Governor's Duties for Legislature; Messages;
Special Sessions; Adjournment

Constitution of the State of Kansas--Legislative--
Organization and Sessions

Synopsis: Although there is no constitutional limitation as to subject matter which may be considered by the Kansas Legislature when it is called into special session, the legislature may adopt a rule or resolution which would restrict the subject matter of bills which may be introduced during such a session. There is no constitutional limitation upon the length of a special session, and any such limitation included within a gubernatorial proclamation (calling the legislature into special session) would be of no legal effect. Bills and resolutions introduced, but not acted upon, during the 1987 regular session of the Kansas Legislature may not be carried over to a special session, and all bills and resolutions enacted during a special session must have been introduced during that session.

Joint Rule No. 4 of the Senate and House of Representatives of the State of Kansas prescribes deadlines for the introduction and consideration of bills by referring to a specific calendar day "of

any regular session." Based upon that language, the rule would not seem to apply to a special session of the legislature. Cited herein: Kan. Const., Art. 1, §5; Kan. Const., Art. 2, §8.

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Dear Senator Yost:

You request our opinion concerning legislative activity which would or would not be proper during a special session of the Kansas Legislature. Your specific questions, and our responses thereto, are set forth below.

"1) [I]s there any limitation on the subject matter which can be dealt with during such a Session?"

Article 1, Section 5 of the Kansas Constitution confers authority on the governor to call the legislature into special session, and provides as follows:

"The governor may, on extraordinary occasions, call the legislature into special session by proclamation; and shall call the legislature into special session, upon petition signed by at least two-thirds of the members elected to each house. At every session of the legislature the governor shall communicate in writing information in reference to the condition of the state, and recommend such measures as he deems expedient. In case of disagreement between the two houses in respect of the time of adjournment, the governor may adjourn the legislature to such time as he deems proper, not beyond its next regular session."

The above-quoted constitutional provision was construed in Farrelly v. Cole, 60 Kan. 356 (1899), wherein the court stated as follows:

"As stated by Judge Cooley, the legislature in this state, when convened, could wholly ignore the reasons given by the governor calling it together, and disregard entirely all suggestions made by

him touching the necessity of proposed legislation. Not being restricted by the Constitution to the consideration of matters within the limits of the governor's proclamation, it might proceed to enact laws having no relevancy to the object for which it was convened." 60 Kan. at 380.

Modern authorities concur with the conclusion in the Farrelly case. See 72 Am.Jur.2d, States §59; 73 Am.Jur.2d, Statutes §35. Accordingly, it is our opinion that there is no constitutional limitation as to subject matter which may be considered by the Kansas Legislature when it is called into special session.

"2) [I]s there any minimum or maximum number of days the Session can be called for, and can the Governor include such limits in his call for a Special Session?"

There is no constitutional provision limiting the length of a special session of the Kansas Legislature. Although Article 1, Section 5 of the Kansas Constitution (quoted above) confers authority upon the governor to adjourn the legislature when there is a disagreement between the two houses regarding the time of adjournment, it does not provide for any executive limitation upon the length of a special session. Therefore, it is our opinion that there is no constitutional limitation upon the length of a special session of the Kansas Legislature, and that any such limitation included within a gubernatorial proclamation (calling the legislature into special session) would be of no legal effect.

In passing, we note that the Florida Supreme Court has held that the calling of an extra session of the Florida legislature is an exercise of executive discretion, and that the governor has power, in the exercise of that discretion, to prescribe a time limitation in the proclamation calling a special session. In re Advisory Opinion To the Governor, 206 So.2d 212 (Fla. 1968). Also, as to special apportionment sessions, the Florida court has held that the governor has no power to prescribe a time limitation. Florida Senate v. Graham, 412 So.2d 360 (Fla. 1982). A comparison of the Florida and Kansas constitutions reveal significant differences in the executive authority to call special sessions, and in our judgment the above-cited Florida cases are not relevant in construing the subject provisions of the Kansas Constitution.

"3) [D]o the existing rules of the Legislature govern its actions during a Special Session, and if so, what kind of deadlines (if any) would exist for the consideration of bills and resolutions by either House, or by the committees of either House?"

Article 2, Section 8 of the Kansas Constitution empowers each house of the legislature to establish its own rules. It has been held that each house is to be the sole judge of its procedure, Leek v. Theis, 217 Kan. 784, 814 (1975), and that non-observance of legislative rules will not render a statute invalid. 73 Am.Jur.2d, Statutes §49. Since legislative rules are not, in and of themselves, of constitutional significance (i.e., a violation of one or more legislative rules will not invalidate an enactment resulting from such a violation), and the Kansas Supreme Court has held that each house of the legislature is to be the sole judge of its procedure, it would not be appropriate for this office to interpret or apply legislative rules.

Although we believe that each house of the legislature is the most appropriate body to determine when its rules apply, we would observe that Joint Rule No. 4 of the Senate and House of Representatives of the State of Kansas prescribes deadlines for the introduction and consideration of bills by referring to a specific calendar day "of any regular session." Accordingly, said rule would not seem to apply to a special session of the legislature.

"4) [C]an the Legislature deal with legislation which has already been introduced, or must all bills and resolutions which are considered during the Special Session be introduced during that Session?"

Article 2, Section 8 of the Kansas Constitution deals with the timing and duration of regular sessions of the legislature, and provides, in part, as follows:

"Bills and concurrent resolutions under consideration by the legislature upon adjournment of a regular session held in an odd numbered year may be considered at the next succeeding regular session held in an even numbered year, as if there had been no such adjournment." (Emphasis added.)

In accordance with the above-quoted language, bills introduced in the 1987 regular session, and not acted upon, may be considered at the next succeeding regular session, i.e. the 1988 session. However, the above-quoted constitutional provision does not indicate that bills under consideration at the adjournment of a regular session (held in an odd numbered year) may be considered at an intervening special session, and there is authority that a special session should be treated as separate and independent from a regular session. 81A C.J.S. States §49. Therefore, it is our opinion that bills and resolutions introduced, but not acted upon, during the 1987 regular session of the Kansas Legislature may not be carried over to a special session, and that all bills and resolutions enacted during a special session must have been introduced during that session.

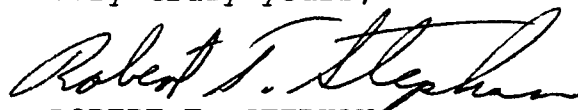
"5) [I]s there any limitation on which committees can be convened for the purpose of considering whatever legislation is deemed proper in your answer to Question #4?"

There is no such constitutional limitation.

6) May the legislature "pass a resolution limiting the subject matter which can be dealt with" during a special session?

A legislature may not adopt rules for the passage of statutes which conflict with provisions of the state constitution. 73 Am.Jur.2d, Statutes §49. A rule which would restrict the subject matter of bills which may be introduced during a special session would seem to be in harmony with the constitutional basis for such a session, i.e. a gubernatorial finding that an "extraordinary occasion" exists. Specifically, notwithstanding the fact that the legislature may consider any subject matter during a special session (see answer question number 1 above), an "extraordinary occasion" seems to suggest a restricted problem requiring legislative attention. Accordingly, it is our opinion that the legislature may adopt a rule or resolution which would restrict the subject matter of bills which may be introduced during a special session.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General