Vernon's

ANNOTATED CONSTITUTION

OF THE

STATE OF TEXAS

Volume 1B

CONSTITUTION

Article

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§§ 17 to End

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§ 40. Special sessions; subjects of legislation; duration

Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

INTERPRETIVE COMMENTARY

When the governor convenes the legislature in special session, the duration thereof is limited to thirty days, and the legislature can consider only those matters stated in the governor's proclamation or those submitted by him after the body meets.

The purpose of the thirty-day limitation period is obvious in that it was the intention of the framers that special sessions should not be extended and drawn out. It may be noted, however, that there is no limitation upon the number of special sessions which the governor may call, and theoretically he could keep the legislature in constant session.

That portion of Section 40 which grants to the governor the control of the agenda of the special session is to compel the legislature to consider those matters necessitating the extraordinary session instead of extraneous matters, which might result otherwise.

Such a provision, of course, permits the governor to exercise a rather wide influence and a large measure of control in that he can force a recalcitrant legislature to consider his legislative program and can thus focus the attention of the public thereon.

The power of the governor to control the subject matter is restricted to legislative acts and not to those of a judicial or executive nature exercised by the legislature, for the legislature may, at a special session, perform functions such as impeachment and passing on appointments.

Moreover, the governor has no power to control the details of legislation, and it is not necessary that he state those details in his proclamation, but only that he present in general the subjects for legislative consideration. See Ex parte Fulton, 86 Cr.R. 149, 215 S.W. 331 (1919).

It has been held that the courts will not go behind the record of approval of an act which was passed at a special session in order to ascertain if the subject matter was in response to the subject matter designated or presented by the governor. See City of Houston v. Allred, 123 T. 334, 71 S.W.2d 251 (1934).

Cross References

Meetings of Legislature, see Vernon's Ann.Const. Art. 3, § 5.

Law Review and Journal Commentaries

Texas legislative redistricting: Proposed constitutional and statutory amendments for an improved process. Arthur J. Anderson, 43 Sw.L.J. 719 (1989).

Library References

Statutes ⚷5.
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C.J.S. Statutes §§ 10, 13.

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1. In general

This section requires that the subject for legislation be presented to the legislature by the Governor in writing. Manor Casino v. State (Civ.App. 1896) 34 S.W. 769.

2. Subjects presented by proclamation

The proclamation of the Governor convening the legislature in special session and announcing the purpose, among other things, to reduce the taxes both ad valorem and occupation, so far as may be found consistent with the support of an efficient state government, embraces the whole subject of taxation and authorizes any such legislation on that subject as was deemed necessary by the legislature. Baldwin v. State (App. 1886) 3 S.W. 109.

Under this section the Governor need not define subjects of legislation with precision and a proclamation authorizing the reapportionment of the judicial districts of the entire state, by implication authorizes all such legislation on that subject as may be deemed necessary by the legislature. Brown v. State (Cr.App. 1893) 32 Tex.Crim. 119, 22 S.W. 596.

The proclamation of the Governor convening the 30th Legislature in special session stated as a purpose of the session the enactment of laws simplifying the procedure in both civil and criminal trials. The purpose so stated was sufficient to authorize the enactment of Acts 1907, p. 447, ch. 8, relating to contests of local option elections. Stockard v. Reid (Civ.App. 1909) 57 Tex.Civ.App. 126, 121 S.W. 1144, error refused.

Where a Governor's proclamation convening a special legislative session provided that it was to enact adequate laws simplifying the procedure in both civil and criminal courts of the state and enacting and changing the existing laws governing court procedure, the words "court procedure" should be held to apply generally to all laws governing the operation of courts including those regulating the times within which sessions of courts may be held, and hence Acts, 31st Leg., ch. 13, changing, extending and rearranging the terms of the criminal district courts of Harris and Galveston Counties, was within such proclamation. Long v. State (Cr.App. 1910) 58 Tex.Crim. 209, 127 S.W. 208.

A message from the governor to the legislature in special session was not sufficient, as a submission of certain matters, to warrant their consideration by the legislature; governor's response to request by legislature at special session for submission of further subjects was construed as a promise to consider the request, so that the legislature by a committee could seek information to impress on him the necessity for a submission of such matters. Ex parte Wolters (Cr.App. 1911) 64 Tex.Crim. 238, 144 S.W. 531.

The Governor's authorization to the Legislature to create an additional criminal district court for Dallas County authorized it to define the court's jurisdiction. Howard v. State (Cr. App. 1915) 77 Tex.Crim. 185, 178 S.W. 506.

Governor's proclamation or messages, submitting subject of legislation to special session under this section, need not state the details of the legislation to be considered, such matters being within discretion of Legislature. Acts 1918, 35th Leg., 4th C.S., ch. 31, amending Allison Shipping Law, so as to make it unlawful to have or keep intoxicants in public place in local option territory or transport liquor therein, was authorized under this section by proclamation calling for legislation to restrict liquor traffic and render liquor inaccessible to soldiers. Ex parte Fulton (Cr.App. 1919) 86 Tex. Crim. 149, 215 S.W. 331.

Special session of the Legislature having been called by the Governor to deal with the subject of intoxicants embraced in his message, the discretion as to means, within the limits of the Constitution, was with the Legislature, and beyond the control of the Governor, save in his exercise of the veto power. Ex parte Davis (Cr.App. 1919) 86 Tex.Crim. 168, 215 S.W. 341.

Acts 1918, 35th Leg., 4th C.S., ch. 24, § 1, prohibiting the manufacture of intoxicants was not invalid as having been passed at a special

session and not relating to a subject presented by the Governor, as required by this section; he having mentioned the matter of intoxicants in his proclamation, and elaborated his views in a subsequent message. Ex parte Davis (Cr.App. 1919) 86 Tex.Crim. 168, 215 S.W. 341.

The Texas Legislature, sitting in special session, may request the Congress of the United States to call a convention to amend the United States Constitution even though this subject was not included in the proclamation of the Governor calling the session, and provided the resolution passes both houses of the legislature, no valid objection may be made to it. Op.Atty.Gen. 1972, No. M-1167.

3. Validity of laws passed

Court will not go behind record of approval of act passed at special session of Legislature to ascertain if subject-matter was in response to subject designated or presented by Governor. Houston, City Of, v. Allred, 1934, 123 Tex. 334, 71 S.W.2d 251; State ex rel. Richardson v. Larkin (Civ.App. 1905) 41 Tex.Civ.App. 253, 90 S.W. 912, error refused; Maldonado v. State (Cr.App. 1971) 473 S.W.2d 26; Reyna v. State (Cr.App. 1972) 477 S.W.2d 564.

This section is mandatory and Act of May 12, 1888, authorizing the issuance of injunction to restrain the violation of revenue and penal laws is invalid for having been passed in violation thereof. Manor Casino v. State (Civ.App. 1896) 34 S.W. 769.

Law passed at special session cannot be invalidated by showing by proclamation and journals of legislature, that it did not relate to any subject mentioned in the proclamation or any message. Presidio County v. City Nat. Bank of Paducah (Civ.App. 1898) 20 Tex.Civ.App. 511, 44 S.W. 1069, error refused.

Resort may not be had to proclamation of Governor and House Bills to invalidate duly authenticated, approved, and enrolled statute. Jackson v. Walker (Sup. 1932) 121 Tex. 303, 49 S.W.2d 693.

Where act has been passed by Legislature, signed by proper officers of each House, approved by Governor or passed notwithstanding his disapproval, and filed in office of Secretary of State, resort may not be had to proclamation of Governor, to terms of bill as originally introduced or amendments thereto, to journal of Legislature, nor to parol evidence for purpose of impeaching or invalidating law. Waggoner Estate v. Gleghorn (Civ.App. 1963) 370 S.W.2d 786, error granted, affirmed 378 S.W.2d 47.

4. Impeachment at special session

Judgment in impeachment proceedings under Art. 15, §§ 1 to 5, was not void because charges were adopted and filed and the trial was entered upon by the Senate at a special session convened by a proclamation of the Governor which did not designate such action as purpose for which special session was called, since neither House acts in a legislative capacity in matters of impeachment, within this section. Ferguson v. Maddox (Sup. 1924) 114 Tex. 85, 263 S.W. 888.

5. Separate meeting of one house

Any separate and special meeting of state senators is not a valid session of the Senate, and every attempted official act of senators thus assembled is a nullity, and therefore action of senators in rejecting appointment of certain individual as chairman of the Unemployment Compensation Commission at such a session held in January, 1946, was invalid, and comptroller is required to issue a warrant for salary for entire month of January. Op.Atty.Gen.1946, No. 0-7061.