Hunter
Carr
Pickrell
Clawson

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

April 8, 1954
Letter Opinion
No. 54-97-L

The Honorable Louis B. Ellsworth, Jr.
House of Representatives
Capitol Building
Phoenix, Arizona

Re: Constitutionality of legislation passed after Legislature has been in session 60 days; procedure for call of the House, and legality of enforcing members to remain in session after 60 days have expired.

Dear Mr. Ellsworth:

You have requested the opinion of this office concerning the following three questions:

1. Is any legislation constitutional after the 60 day period when the Legislature has adjourned from day to day rather than recessed from day to day?

2. What is the proper procedure for call of the House and how many members does it require?

3. Your opinion as to legality of enforcing members to remain in session after the 60 day period has expired. Can members be legally brought back into session if they leave after the 60 day session?

In regard to question No. 1, it appears that the question is premised upon the proposition that the sessions of the Legislature are limited to a sixty day period. The only mention of such a sixty day period in our Constitution is to be found in Article 4, part 2, section 1, subsection (2) which reads as follows:

> "(2) (Compensation of legislators.) From and after the adoption of this amendment members of the legislature shall receive $8.00 per day; provided however, that they shall receive such compensation for a period not to exceed 60 days in any one regular session and for a period of not to exceed 20 days in any one special session. They shall also receive mileage one way by the shortest practical route at the rate of 20¢ per

> mile. The total number of attaches or employees of the senate shall not exceed 14 and the total number of attaches or employees of the house of representatives shall not exceed a number equal to two-thirds of the members thereof, and the compensation of such attaches or employees except the chief clerk or secretary of each branch shall not exceed $5.00 per day.
>
> This amendment shall be in all respects self-executing."

It is apparent from a reading of the above quoted section that it limits compensation of members of the Legislature to a period not to exceed sixty days and there is no mention of a restriction or limitation of a session to sixty days. If the Legislature is, by our Constitution, restricted to a session of sixty days there would be no need for this provision. The provision itself contemplates sessions extending beyond a sixty day period.

Article 4, part 2, section 3, Co nstitution of Arizona, is the section of our Constitution which specifically covers legislative sessions. This section provides as follows:

> "§3. (Legislative sessions.) --The sessions of the legislature shall be held annually at the capitol of the state, and shall commence on the second Monday of January of each year. The governor may call a special session, whenever in his judgment it is advisable. In calling a special session, the governor shall specify the subjects to be considered, and at such special session no laws shall be enacted except such as relate to the subjects mentioned in the call. (As amended Sept. 12, 1950.)"

It will be noted that the above quoted section provides for a date to commence each session of the Legislature but is silent as to a specific date of adjournment or length of such sessions.

The case of EARHART v. FROHMILLER, 65 Ariz. 221, 178 P.2d 436, pointed out that the Constitution is not to be searched for authorization for legislative authority but only to see if the act of a legislature is prohibited. The court cited, with approval, FITTS v. SUPERIOR COURT OF LOS ANGELES COUNTY, 6 Cal. 2d 230, 57 P.2d 510, 512, as follows, at page 438:

> "* * *'We do not look to the (state) Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.'* * *"

The court also said, at page 437:

> "We believe the rule of construction which requires the finding of express authorization is inappropriate when applied to the Constitution of the State of Arizona, and by the great weight of authority throughout the United States, it is not applicable to the construction of state constitutions generally. Art. 2, Sec. 33 of the Arizona Constitution states that 'The enumeration in this constitution of certain rights shall not be construed to deny others retained by the people.' Unlike the Federal Constitution, state constitutions are not grants of power, but instead are limitations thereof. The generally accepted doctrine is that except for those things necessarily inhibited by the Federal or state constitution, the state legislature may pass any act, because the whole power not prohibited by the state and federal constitutions is retained in the people and their elected representatives in the state. * * *"

Considering the above quoted sections of the Constitution together, it is apparent that there is no constitutional limitation on the length of sessions of the Legislature.

Inasmuch as the Legislature is in session until it has adjourned sine die with the consent of both the Senate and House, any legislation passed during such a session is constitutional and the answer to your first question is in the affirmative.

In answer to question No. 2, the rules of the House of Representatives, 21st Legislature, and Manual of Procedure, Rule XI, page 14, provides for "Quorum; Call of the House". This rule provides as follows:

> "RULE XI
> Quorum; Call of the House
>
> 1. The majority of the members of the House shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as the House may prescribe. The House shall not adjourn for more than three (3) days, nor to any place other than that in which it may be sitting, without the

> consent of the Senate. (Const., Art. IV, Sec. 9).
>
> 2. Whenever a quorum is not present and objection is made for this cause, unless the House shall adjourn, there shall be a call of the House, and the sergeant-at-arms shall forthwith proceed to bring in absent members and present them at the bar of the House, whereupon, the members shall be noted as present, discharged from custody, and be given an opportunity to vote, and their vote shall be recorded."

This rule of the House is promulgated pursuant to Article 4, part 2, section 9 of the Constitution of Arizona, which reads as follows:

> "§9. (Quorum--Compulsory attendance.)--The majority of the members of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe. Neither house shall adjourn for more than three days, nor to any place other than that in which it may be sitting, without the consent of the other."

According to the Rules of the House of Representatives, the proper procedure for a call of the House is for a member to object that there is not a quorum to do business, and if the House does not adjourn as provided in paragraph 1 of Rule XI, for not to exceed three days, it is mandatory that there be a call of the House and that the Sergeant-at-Arms forthwith proceed to bring in absent members. Since there is no procedure by which the call is to be made, it appears that the mandatory duty to issue the call is upon the Speaker of the House. If the House does adjourn for not to exceed three days, upon the return of the House after adjournment the same procedure will be followed.

In answer to your third question, it is our opinion that the House may legally be forced to remain in session after the 60th day, and members may be forced to remain in session, or brought back into session if they leave, after the 60th day of the session.

As clearly indicated by Article 4, part 2, section 9, of the Constitution of Arizona, and House Rule XI, quoted above, the Legislature is an organized body, with the action of each house subject to the consent of the other, and the members of each house

subject to constitutional provisions and rules which are adopted by each house to control its procedures and the actions of its members. Each house and each of its members are subject to majority rule. No individual or minority group of members may determine for himself or themselves the action to be taken. This organization, majority rule, and necessity for consent of the other house, all continue until the legislature as a body adjourns sine die with the consent of both houses.

Very sincerely,

JAMES E. HUNTER
Special Assistant to
The Attorney General

ALFRED B. CARR
Assistant to the
Attorney General

JEH/ABC;bhh