

January 23, 1937

Hon. Vernon G. Davis
Speaker of the House of Representatives
Phoenix, Arizona

Dear Mr. Davis:

I am returning you herewith mimeographed copy of Senate Bill no. 21, which accompanied your request for an opinion as to the constitutionality of the bill. I have examined this measure carefully and the law relative thereto.

The Supreme Court of this State has spoken on the question in the case of Priser, et al., v. Frohmiller, State Auditor, which case was decided on the 2d day of May, 1933, and reported in 21 Pac. (2d) at page 927. The question there under consideration was the reduction of the pay of the members of the Legislature from \$15.00 to \$8.00 per day under the constitutional amendment which was adopted at the November election in 1932 and became a law on November 28, 1932. This action was brought claiming that this act did not reduce the pay of the legislators. The Court discussed the question at length and used language in the opinion which admits of no argument or misconstruction, and reads as follows:

" If the change of per diem of legislators had been by legislative and not by constitutional act of the people, the result would be the same. The measure took effect or became law on November 28, 1932, the day it was proclaimed by the Governor. Subdivision 13, Section 1, pt. 1, art. 4, Constitution. The term of plaintiffs' office is two years. Section 21, pt. 2, Id. Regular sessions of the legislature, after the first one 'commence on the second Monday of January next after the election of members of the legislature.' Section 3 pt. 2, Id. Thus it is seen that the reduction of the per diem was not during the term of office, but before the term commenced.

When the plaintiff members of the legislature asked the suffrage of the people, they knew that their constituents would vote on the proposed amendment to the Constitution reducing their per diem at the same time they voted for them, and, notwithstanding, sought the office. They were then willing to accept the office on such terms and conditions as their constituents should impose; and on the theory that 'a bargain is a bargain', binding alike on both parties, plaintiffs have no just cause for complaint.

The amendment was an economy measure proposed by the people. It had for its object the reduction of the expenses of government. This is evidenced by the 'argument' of 'a state-wide legislative economy committee' attached to the measure and circulated generally throughout the state before the election by the secretary of state in the 'Publicity Pamphlet,' sent to the voters as provided by law. In this argument it is said: 'this amendment proposes to reduce the number of the members of the House of Representatives from 64, the present number, to 37. It cuts the pay of legislators from \$15.00 to \$8.00 per day and limits the pay of attaches to \$5.00 per day, except for the chief clerks. It will save in round numbers \$60,000.00 of state money now paid to legislators and attaches for salaries alone, saying nothing of other savings. It limits the number of attaches of the Senate to 14 and of the House to two-thirds of the membership. It limits the regular sessions to sixty days and special sessions to twenty days.'

The course pursued to secure this economy is constitutional and the law must be observed. Neither the courts nor the legislature can lawfully change or evade it in any respect."

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Applying the principles laid down in the above opinion by the Supreme Court of this State, it is our opinion that Senate Bill No. 21 is unconstitutional.

Very truly yours,

JOE CONWAY
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