

2 December 1946

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Yalo McFate, Commissioner,
Arizona Corporation Commission
State Capitol Annex
Phoenix, Arizona

Dear Mr. McFate:

We acknowledge receipt of your letter of 2 October 1946, requesting our opinion as to the effective date of an appropriation measure which does not carry the emergency clause.

Prior to the decision in Garvey v. Trow, on 28 June, 1946 (170 P. 2d.845), a long line of decisions of the Arizona Supreme Court appear to have held that all measures passed by the legislature, which do not carry an emergency clause, went into effect ninety days after the close of the session of legislature enacting the measure.

We do not believe the point has ever been directly presented to the Supreme Court purely in regard to appropriation measures, although most of the decisions could be construed to hold that appropriation measures, passed without the emergency clause, must await the ninety days before they become law.

This interpretation has apparently been based upon an erroneous construction of Article 4, part 1, section 1, paragraph 3, of the Constitution of Arizona. The misconstrued portion reads as follows:

"* * * but to allow opportunity for referendum petitions, no Act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions; * * * * *".

Prior to the decision in Garvey v. Trow, supra, the conjunction "or" separating the emergency reference in the Constitution from the appropriation reference was construed as connective, and on that basis it was held that appropriation measures must also have the emergency clause. The point was directly presented to the Supreme Court in Garvey v. Trow,

and it was held that the conjunction "or" separating the two clauses should be construed as disjunctive, there being no reason apparent why it should be construed out of its ordinary sense. The Supreme Court said, in that connection:

"* * * * *

If the constitutional provisions clearly give this power to the minority, they must be enforced. Do the provisions adopted disclose this intention? It is first provided in the section which we have quoted that certain emergency measures immediately necessary for the preservation of the public health or safety shall be excepted; and second, those for the support and maintenance of the departments of the state government and state institutions. Again in the section it is specifically provided that no act passed shall be operative until ninety days after the close of the session 'except such as require earlier operation to preserve the public peace, health or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions'.

Reading this section as a whole, it clearly appears that two separate and distinct classes of acts are exempt from the referendum. First, measures immediately necessary for the preservation of the public peace, health or safety; second, measures for the support and maintenance of governmental departments and institutions. These classes of acts are wholly unrelated. The first are police measures and only that character of such police acts as are immediately necessary to preserve the public peace, health or safety. The second relates wholly to appropriations for support of government function. It is obvious that the proviso that no such emergency measure shall be considered passed by the legislature refers only to the police power acts of a character immediately necessary to preserve the peace, etc. Appropriations may or may not be immediately required. Any other construction violates all the rules which require that the evident intent of the framers or authors as expressed must be the cardinal principle of construction. The words 'immediately necessary' as used in the first sentence do not apply to

the support and maintenance clause which is placed in the disjunctive. State ex rel. Blakeslee v. Clausen, 85 Wash. 260, 148 P. 28, Ann. Cas. 1916B, 810. It will be noted that the second class of measures exempted are joined disjunctively with the first class. The qualifying words 'immediately necessary', therefore, are to be applied only to the first class of laws, but not to the support and maintenance measure since the word 'or' rather than the word 'and' is used. In 59 C.J. 986, sec. 584, Statutes, the rule of construction with respect to disjunctive words is said to be 'When, and only when, necessary to effectuate the obvious intention of the legislature, conjunctive words may be construed as disjunctive, and vice versa'. Considering all of the provisions of the constitution relating to the referendum, there is obviously no intention to use 'or' other than as a disjunctive.

What we have said also applies to the following provision, 'No act passed by the legislature shall be operative for ninety days after the close of the session of the legislature enacting such measure, except such as require earlier operation to preserve the public peace, health, or safety, or to provide appropriations for the support and maintenance of the departments of the state and of state institutions'. It seems clear to us that the words 'earlier operation' mentioned in the first class of acts, public peace, etc., have no application to measures providing for appropriations. It will be noticed that this is also joined in the disjunctive. It is, therefore, our view that measures to provide appropriations for support and maintenance are exempt from the referendum.

* * * * *

(Emphasis supplied) Garvey v. Trew, supra.

It is only logical for this conclusion to be reached aside from the interpretation of the strict wording of the Constitution, and the only reason that the operation of a measure is suspended for ninety days is to allow opportunity for referendum petition to be filed and thus further suspend the measure. Since appropriation measures for the support and maintenance of the state government are exempt from the referendum, there is no reason why their operation should be delayed to allow opportunity for referendum petitions to be circulated against them.

Based upon the foregoing, it is our opinion that the \$6,000.00 appropriated to the Corporation Commission by the third special session of the Seventeenth Legislature, for operating expenses and personal services for the thirty-fifth fiscal year, is available for immediate use by that Commission.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

JOHN W. ROOD,
Chief Assistant
Attorney General

BURR SUTTER
Assistant Attorney General

JWR:prb