

June 13, 1947

Hon. Lorna C. Lockwood,
House of Representatives,
State House,
Phoenix, Arizona

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

Dear Miss Lockwood:

In reply to your verbal request this morning for an opinion from this office covering the following two points:

- (1) In the event the present special session of the Legislature should recess instead of adjourning sine die, could the Governor legally, during the recess period, call the Legislature back for a second special session?

and,

- (2) What may the Legislature do relative to the payment of the amounts deducted from the May checks for old age assistance?

Replying to your first inquiry we find that Article 5, Section 4 of the Constitution reads in part as follows:

"Sec. 4. Powers of Governor. * * * He may convene the Legislature in extraordinary session. * * *"

We have examined the Constitution of the State of Maine and find that Article 5, Part First of the Constitution reads in part as follows:

"Section 1. The supreme executive power of this state should be vested in a Governor. * * * * * . Section 13. He may, on extraordinary occasions convene the Legislature; * * * * *."

Under the Maine law the Governor may request an opinion on any matter from the Supreme Court and in the case of In re Question and Answer, 14 Atl. (2d) page 11, the Supreme Court answered a question submitted to it as follows:

"To His Excellency, Lewis O. Barrows,
Governor of Maine:

The undersigned Justices of the Supreme
Judicial Court have the honor to submit the
following answer to the question propounded
to us, bearing date of June 20, 1940.

Question:

When an extraordinary occasion arises,
has the Governor the power and authority to
convene the Legislature in special session
during a recess of a special session pre-
viously called by him?

Answer:

We answer this question in the affirma-
tive.

Very respectfully,

Charles P. Barnes,
Chief Justice

Guy H. Sturgis
Sidney St. F. Thaxter
James H. Hudson
Harry Manser
George H. Worster
Justices."

The Supreme Court of the State of Alabama has a con-
stitutional provision similar to ours relative to the authority
of the Governor to call a special session and in the case of In
re Opinion of the Justices, 132 So. page 311, the following
quotation is found:

"(1) Section 48 of the Constitution pro-
vides for the regular term or session of the
Legislature, and fixes the time for convening,
but does not prohibit a recess for any partic-
ular period, except there should of course be
a final adjournment before the commencement
of another regular term. In re Opinions of
the Justices, 216 Atl. 545, 113 So. 621.

Section 122 of the Constitution authorizes
the Governor to convene the Legislature into
an extra or special term, and section 76 pre-
scribes the order of business and certain
limitations on the Legislature during 47-179

special session and also limits the period of said special session. Therefore, should there be a lengthy recess of the regular term and an emergency or necessity should arise, there is no reason why the Governor cannot convene the Legislature into a special session during the recess of said regular term".

Also see In re Opinions of Justices, 21 N. E. (2d) 551 (Mass.) and Opinion of the Justices, 37 Atl. (2d) 478 (N.H.)

While we are unable to find where the Arizona Supreme Court has passed on this question we believe that the foregoing citations fully justify us in expressing the opinion that should the present Legislature recess instead of adjourning, the Governor could, if he believed the occasion demanded it, call a special session at any time during the recess period.

Replying to your second question we believe that aside from the question concerning the availability of money to make the payments to the old age recipients there is only one section of our statute which might become involved in the payments to them referred to by you. This is Section 12-501 prohibiting the payment of any claim "against the state not authorized by law". However, we believe that this section would not be violated because the payments, although not made at the time they were supposed to have been, were authorized by law and making them at a later date would surely not violate this provision, of course, assuming money was available for such payments. It is also our understanding that the \$48.50 which was paid for old age assistance during May comprised \$25.00 paid by Federal funds and \$23.50 paid by the State of Arizona and that therefore an appropriation of sufficient money to make up this deficit would be proper and valid legislation, provided, however, that any such bill would need to be prepared and passed so as to escape the requirements contained in Section 70-205, being Chapter 12 of the Third Special Session of the Seventeenth Legislature.

Very truly yours,

JOHN L. SULLIVAN,
Attorney General

PERRY M. LING,
Assistant Attorney General

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