

March 2, 1948

Hon. Marvin E. Smith,
Arizona State Senate,
State House,
Phoenix, Arizona.

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ARIZONA ATTORNEY GENERAL

Dear Senator Smith:

In answer to your request for an opinion from this office concerning the question whether Senate Bill 23 is included in the call for the present special session, we believe that this bill can properly come under title number eight "appropriations" if, and only if, an appropriation is attached to the bill in its final form. Our reasoning is as follows:

Only those matters properly within the subjects enacted under the Governor's call for the special session may be considered. 59 C. J., Statutes, Section 22.

Article 4, part 2, section 3 of our Constitution states in part that:-

"The Governor may call a special session whenever in his judgment it is advisable. In calling such special session, the Governor shall specify the subjects to be considered at such session, and at such session no laws shall be enacted except such as relate to the subjects mentioned in such call."
(Emphasis supplied)

The word subject or subjects in provisions similar to ours above has been interpreted by many other state courts and quite uniformly it is held to be broad in scope embracing all legislation that could reasonably be brought within the purview of the topics set forth in the Governor's call. *Brinsfield v State*, 259 P. 875; *Blackford v Judith Basin*, 98 P. 2d 872; *Corn v Fort*, 95 S.W. 2d 620; *Kemp v State*, 248 P. 1117. It appears that there is a strong presumption in favor of the proposition that proposed legislation comes within the call unless it concerns a matter entirely foreign to any of the subjects in the call. *Board of Regents of the University of Arizona v Sullivan*, 45 Ariz. 245, 42 P. 2d 619;

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In Re Platz, 108 P. 2d 859; State v Woolen, 161 S. W. 1006. According to the law, each case must be decided upon its own merits and by its own facts, and the test is whether or not the public could reasonably be put on notice that legislation of the sort enacted might be considered under the subjects listed in the Governor's call. Vol. 1, Sutherland on Statutory Construction, 3d Ed., sec. 509. The closest case in point that we have been able to find a quick search in Parsons v People, (Colo.), 76 P. 666, in which a recitation by the governor of Colorado in the call for a special session stated that it was to provide, among other things, for necessary revenue. This general title was held broad enough, inclusive enough, and sufficiently informative to the electorate to include the passage of any tax legislation whatsoever.

Assuming an appropriation is attached to Senate Bill 23, our only legal doubt as to whether it would properly come within the call arises by the operation of the rule "expressio unius est exclusio alterius" in that number 10 on the Governor's call specifically mentioning the salary of appointive officials might be interpreted to exclude a consideration of the salary of elected officials.

It is however the opinion of this office that this rule is not controlling in the present case.

Very truly yours,

EVO DE CONCINI,
Attorney General,

EDWARD JACOBSEN,
Assistant Attorney General.

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