Legislative bodies - Powers - Pennsylvania 9-18-67

REPORT

to

Select Committee

Appointed under House Resolution No. 132,

Printer's No. 2070 (Serial No. 138),

Session of 1959

By

LEGISLATIVE REFERENCE BUREAU

and

Staff of

JOINT STATE GOVERNMENT COMMISSION

January 4, 1960

To the Honorables Stephen McCann, George X. Schwartz, James S. Berger, Frank W. Ruth, Raymond P. Shafer, and James S. Bowman, members of the Select Committee of the General Assembly, appointed pursuant to House Resolution No. 132, Printer's No. 2070 (Serial No. 138), Session of 1959:

In accordance with your directive of December 18, 1959, and pursuant to the provisions of Section 2 of the Act of May 15, 1956, P. L. (1955) 1605, there is submitted herewith a report of the Legislative Reference Bureau and the staff of the Joint State Government Commission relating to the recent amendment to Article II, Section 4 of the Constitution of Pennsylvania.

It is clear that the powers of the General Assembly are derived from the Constitution of Pennsylvania and are limited only by that fundamental law and by the Constitution and laws of the United States, as interpreted by the courts of last resort. If limitations upon the legislature's powers are not found in these sources, they do not exist. In the language of the Constitution:

> "The legislative power of this Commonwealth shall be vested in a General Assembly . . ." (Article II, Section 1)
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> "Each house shall have power to determine the rules of its proceedings . . . and shall have all other powers necessary for the legislature of a free State . . ." (Article II, Section 11)

The amendment to Article II, Section 4 of the Pennsylvania Constitution, adopted November 3, 1959, provides for legislative sessions in even-numbered years designated as "regular sessions," subject to the limitation that ". . . the General Assembly shall not enact any laws, except laws raising revenue and laws making appropriations."

Except for the limitation restricting enactments to laws raising revenue and laws making appropriations, the General Assembly in session in even-numbered years possesses all the powers of the General Assembly during any regular session.

Whether or not a particular proposal falls within constitutionally permissive enactments is a question for the legislature itself to decide, subject only to judicial review subsequent to enactment. In construing the constitutional limitations upon legislative enactments relating to fiscal matters, two cases are particularly noteworthy.

The Pennsylvania Supreme Court in Commonwealth ex rel. Greene v. Gregg, 161 Pa. 582, 586 (1894) held that:

> "In general it will not be disputed that the legislature is the exclusive judge of the form in which its enactments shall be put, and its mandate in that respect cannot be questioned unless it transgresses a plain prohibition in the constitution."

Again, the Supreme Court in Commonwealth ex rel. Schnader v. Liveright, Secretary of Welfare, et al., 308 Pa. 35, 67 (1932) held that:

"The control of the state's finances is entirely in the legislature, subject only to these constitutional limitations; and, except as thus restricted, is absolute. Unless expressly prohibited or otherwise directed by that instrument, appropriations may be made for whatever purposes and in whatever amounts the law-making body finds desirable. The legislature in appropriating is supreme within the limits of the revenue and moneys at its disposal." *

Two general sources of guidance are available with respect to the types of legislation which may be enacted under constitutional limitations pertaining to fiscal matters.

The courts of this and other states have construed and the Attorney General has rendered opinions with respect to the meaning of certain of the words and phrases used in the amendment under discussion. A comprehensive survey of the pertinent court decisions, of Attorney General's Opinions, and of the views of other legal authorities relating to the words "revenue raising laws" and "laws making appropriations," prepared by the Legislative Reference Bureau, is presented as part of this report.

The second source of guidance with respect to the types of legislation which may be enacted in "budget sessions" is the experience in other states where alternate-year sessions are similarly limited. Only 16 of the 50 states have annual sessions and of these but 8 have restrictions upon legislation which may be considered or enacted during a "budget session." The pertinent

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*This principle is reiterated in Leahey et al. v. Farrell et al., 362 Pa. 52, 57 (1949); Newport Township School District v. State Tax Equalization Board, 366 Pa. 603, 607 (1951).

constitutional provisions and related information for other states having "budget sessions" -- California, Colorado, Delaware, Kansas, Louisiana, Maryland, and West Virginia -- are summarized in a statement compiled by the staff of the Joint State Government Commission, which is presented at page 22 of this report.

In interpreting the experience of other states with "budget session" limitations, consideration should be given to the precise language of the constitutional limitations imposed in those states. In no case is that language identical to the comparable provisions of the Pennsylvania Constitution.

LEGAL RESEARCH RELATING TO

"laws . . . laws raising revenue and laws making appropriations"

Prepared by

LEGISLATIVE REFERENCE BUREAU

The most recent amendment to Section 4 of Article II of the Constitution of Pennsylvania provides in part "at regular sessions convening in even-numbered years, the General Assembly shall not enact any laws except laws raising revenue and laws making appropriations."

It is now necessary to determine the meaning of this sentence, of the words used, and its effect upon the power of the General Assembly. The provision appears to be a limitation upon the power of the Legislature. While the word "budget" or "fiscal" is not used, it appears that the purpose of the amendment was to provide for budget or fiscal sessions. Sutherland on Statutory Construction (Vol. 1, Section 510) states: "A recent trend in constitutional amendment and revision has been the creation of biennial budget sessions held in even-numbered years and with legislative authority limited to the consideration of the budget or budgetary, revenue and fiscal matters and occasionally limited to 'legislation dealing with an acute emergency.' In general, courts have narrowly construed legislative attempts to expand the subject matter available for consideration at these sessions."

The situation is new to Pennsylvania and, of course, there are no cases directly on point. We, therefore, begin with the most general principles applied by the courts in constitutional construction.

"Any provision of the Constitution must be interpreted in the popular sense and as understood by the people who adopted it."

182 Pa. Super 28---

(1817) 3 S. & R. 63 (reversed 19 U.S. 131) (5 L.Ed. 224)

(1843) 6 Watts 101

(1867) 54 Pa. 255

(1891) 145 Pa. 374

"The Constitution is not to receive a technical construction; but is to be interpreted in the light of ordinary language, the circumstances attending its formation and the construction placed upon it by the people."

370 Pa. 150 (1952)

"The remark of Lord Bacon that 'as exceptions strengthen the force of a general law so enumeration weakens as to things not enumerated' expresses a principle of the common law applicable to the Constitution, which is always to be understood in its plain untechnical sense." Page. v. Allen, 58 Pa. 338.

"The established rules of construction applicable to statutes apply also in the construction of the Constitution." 355 Pa. 599 (1947).

"Statutes as well as constitutional provisions should receive a sensible construction, and general terms should be so limited in their application as not to lead to absurd consequences." 362 Pa. 259. (1949) 49 F. 2nd 789.

316 Pa. 65

342 Pa. 529 - 342 Pa. 119 (Appropriating)

348 Pa. 538

358 Pa. 309 - 42 Am. Jur. 43

386 Pa. 507

An analogy may be drawn between this provision of the Constitution and Article III, Section 25, which provides that when the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session. In

order to equate the two provisions, it is necessary to hold that the words "the General Assembly shall not enact" have the same meaning and same effect as the words "there shall be no legislation upon." If the two phrases mean the same, then legislation not included within the limits of the provision is void. Objections have been made to statutes enacted at a special session on the basis that the act was not within the subjects contained in the Governor's proclamation. In each case the courts have inquired into the question and this principle has evolved. "It is well settled by the decisions of our courts that legislation enacted at a special session of the legislature which is not reasonably within the terms of the call for said session made by the Governor is invalid. It is held that acts of the legislature should not be declared unconstitutional under this provision of the Constitution, or any other provision thereof, unless the legislation is clearly, strongly, and imperatively prohibited. Every presumption is in favor of the constitutionality of the acts of the legislature, and it is the duty of the courts to search for such construction of statutes as will support the legislation:" Pittsburg's Petition, 217 Pa. 227; Likins's Petition (No. 1), 223 Pa. 456; Likins's Petition (No. 2), 223 Pa. 468; Com. ex rel. Schnader v. Liveright, Secretary of Welfare, et al., 308 Pa. 35.

The State of Kansas recently adopted an amendment to its Constitution providing for budget sessions. During the first budget session, the legislature attempted to create a new office, a budget committee. In an action in quo warranto, the court (State v. Anderson, 180 Kan. 120, 299 P. 2d 1078, 1956) held the action of the legislature unconstitutional in that it was not within the

purview of the budget session. The court gives a good analysis of the history and purpose of budget sessions. The court states: "When interpreting or construing a constitutional amendment we must examine the language used in it and consider that, in connection with the general surrounding facts and circumstances that caused the amendment to be submitted. We have already demonstrated how the amendment happened to be submitted in order to enable the legislature to legislate more nearly in harmony with Chapter 375 of the Laws of 1953. We have demonstrated the problem of governmental financing which it was hoped Chapter 375 would help solve." With respect to the effect of the provision upon the power of the legislature, the court had this to say: "It is fundamental that our state constitution limits, rather than confers, powers. Where the constitutionality of a statute is involved, the question presented is, therefore, not whether the act is authorized by the constitution, but whether it is prohibited thereby."

We now proceed to a consideration of the words used in the amendment, specifically the words "law," "laws raising revenue," and "laws making appropriations." Since the limitation is upon the General Assembly, it can relate only to laws of which the General Assembly is the author. The Constitution of Pennsylvania sets out the procedure under which the General Assembly may enact laws which is by "bill" passed by both houses and not disapproved by the Governor. The courts of Pennsylvania have construed the meaning of the words "act," "law," and "legislation." In Sweeney v. King, 289 Pa. 92 (1927), it was held that resolutions for constitutional amendments are not legislation under Article III,

Section 25 of the Constitution and in Com. ex rel. v. Griest, 196 Pa. 396 (1900) that there is no power in the Governor to veto a resolution proposing an amendment to the Constitution since such a resolution is not a "law."

A joint resolution is not a bill when adopted by both houses and approved by the Governor and is not a "law" within the meaning of the Constitution. It is a mere formal expression of the opinion or will of the legislature. Scudder v. Smith, 331 Pa. 165 (1938). "I am therefore of opinion that not all joint or concurrent resolutions passed by the legislature must be submitted to the Governor for his approval, but only such as make legislation or have the effect of legislating, i.e. enacting, repealing or amending laws or statutes or which have the effect of committing the State to a certain action, or which provide for the expenditure of public money. Resolutions which are passed for any other purpose such as the appointment of a committee by the legislature to obtain information on legislative matters for its future use or to investigate conditions in order to assist in future legislation are not required to be presented to the Governor for action thereupon:" Joint or Concurrent Resolutions, Attorney General's Opinions, 1915-16, pp. 2, 4 (1915); 24 Dist. 721, 723.

The opinion includes discussion of a number of resolutions with a decision on each as to whether or not action by the Governor is required. An examination of these leads to a better understanding of the application of the above rule.

See also Concurrent Resolutions, 7 D. & C. 672 (1926), another Attorney General's opinion, in which the above rule is applied.

Considering these authorities, we believe that a fair construction of the amendment would limit its operation to those actions of the General Assembly which are taken in concert with the Governor or are at least subject to the Governor's power of veto. Such a construction would exclude from the operation of the amendment such actions as constitutional amendments, investigations and the executive business of the Senate.

We now proceed to a consideration of the meaning of the words "laws raising revenue."

The term "Revenue" by itself is a broad and ambiguous term which may be used in many senses. Its meaning in respect to governmental bodies may mean "the income of the state or nation derived from the duties, taxes, and other sources for the payment of the national expenses; the income which a state collects and receives into its treasury, and is appropriated for the payment of its expenses; the current income of the state from whatsoever source derived, which is subject to appropriation for public uses; the income of the government arising from taxation, duties, and the like; the proceeds to public bodies from taxes, etc.; the annual or periodic yield of taxes, excise, customs, etc., which the state collects and receives into the treasury for public use; all public moneys which the state collects and receives, from whatever source and in whatever manner." C. J. S., V. 77, p. 334, 335.

The term "revenue raising measure" or "law raising revenue" has been construed by the courts many times with respect to a variety of constitutional provisions. Article III, Section 14 of the Constitution of Pennsylvania provides that: "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills." In interpreting the term "raising revenue" as used in this provision of the Pennsylvania Constitution, the Pennsylvania Supreme Court in Mikell Trustee v. Phila. Sch. Dist., 359 Pa. 113, 4 ALR 2d 962 (1948) held that an act which imposed a personal property tax upon the residents of first class school districts ". . . for public school purposes . . ." was not a revenue-raising law. The court based this finding on the following authorities and rationale:

"The act in question [Act of June 20, 1947, P. L. 733] is not a revenue-raising measure within the meaning of that term as used in Art. III, Sec. 14, of the Pennsylvania Constitution. To qualify as a bill within the purview of the cited constitutional provision, at least the revenue derived from the tax imposed should be coverable into the treasury of the exacting sovereign for its own general governmental uses . . .

". . . . . according to the practical . . . . construction of the Constitution . . . . [all bills for raising revenue] . . . . '"has been confined to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which incidentally create revenue"'. . . . . 'The precise question

before us came under the consideration of Mr. Justice Story, in the United States v. Mayo, 1 Gall. 396. He held that the phrase revenue laws, as used in the Act of 1804, meant such laws "as are made for the direct and avowed purpose of creating revenue or public funds for the service of the government"'. In Twin City Bank v. Nebeker, 167 U. S. 196, 202-203, a tax upon the average amount of the circulating notes of a banking institution was held not to be a revenue-raising measure within the meaning of the constitutional directive. Mr. Justice Harlan, who spoke for the Court in that case, reiterated in part the quotation from Story contained in the Norton case, supra, and added that 'There was no purpose by the Act or by any of its /taxing/ provisions to raise revenue to be applied in meeting the expenses or obligations of the Government.' Likewise, in Millard v. Roberts, 202 U.S. 429, an act of congress taxing property in the District of Columbia in order to provide funds for the construction of railroad terminal facilities in the District was held not to be a revenue-raising measure upon the expressed sole authority of Twin City Bank v. Nebeker, supra. Similarly, in Geer v. Board of Commissioners, 97 Fed. 435, Circuit Judge Sanborn of the Eighth Circuit ruled that a Colorado statute providing for the refunding of the bonded indebtedness of several counties of the State and authorizing the levy of taxes to liquidate the bonds and coupons, as due, was not a bill for raising revenue within the meaning of the provision in the Colorado Constitution . . . . .

". . . . . [The] Court (State v. Bernheim, 19 Mont. 512, 49 Pac. 441) . . . held, in the language of Story, that the provision of the Constitution now under consideration must be confined in its meaning to bills to levy taxes in the strict sense of the words, and has not been understood to extend to bills for other purposes which may incidentally create revenue.' . . .

"In the present instance, there can be no suggestion that any part of the tax imposed by the Act will be used for the State's governmental purposes . . . . . the impost is laid upon personal property of residents of designated school districts and the taxes collected will be used for public school purposes within such districts. The Act so stipulates. It is true that the described personal property is directly made taxable by the Act, but the annual levy, within the statutorily specified maximum and minimum limits, is a matter for the independent action of the respective boards of public education of the designated districts. . . ."

These authorities indicate that to be a revenue raising measure, a bill must only levy taxes in the strict sense of the word and not one which incidentally creates revenue. In determining the nature of a bill or law for raising revenue, we should be primarily concerned with the chief objectives of such a measure. The income raised must be received into the State Treasury and used for general governmental purposes.*

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*Story, Cons. Sec. 880 cited in U.S. v. Norton, 91 U.S. 566, and Mikell, Trustee v. Phila. Sch. Dist. 359 Pa. 113.

Public Market Co. of Portland v. City of Portland, 130 P. 2d 624, 644, 171 Or. 522.

Davis v. Phipps, 85 S.W. 2d 1020, 191, Ark. 298, 100 ALR 1110.

From this finding we can logically determine that the term "revenue" when used in the Pennsylvania Constitution in regards to "raising revenue" has a fairly definite meaning. If this meaning, in the absence of qualifying language is used consistently throughout the Constitution, the meaning of "raising revenue" in Art. III, Sec. 4 would be the same as "raising revenue" in Article III, Sec. 14.

Illustrative of legislation which is not basically a revenue producing measure are the unemployment compensation statutes, liquor control statutes, statutes imposing taxes upon harmful drugs (as a means of regulation), statutes imposing fees to diminish the minor costs of administration and other statutes intended to regulate business and other activities in the interests of economic welfare and safety. Sutherland Statutory Construction, Vol. 3, p. 316.

The following are specific examples of instances where the courts have held that an act or bill is or is not a revenue raising measure:

1. Revenue bills are those only that levy taxes in the strict sense of the word. Wallace v. Gassaway, 298 P. 867, 870, 148 Okl. 265. Johnson v. Grady County, 150 P. 497, 499, 50 Okl. 188; In re Sprankle Co., 170 P. 1147, 1148, 69 Okl. 178; Lusk v. Ryan, 171 P. 323, 324, 69 Okl. 165.

2. Statute levying franchise tax on foreign corporations for privilege of doing business within state was a "revenue act." Rowley v. Bird Island Trapping Co., 11 So. 2d 553, 554, 202 La. 273.

3. The Alcoholic Beverage Control Act imposing a tax upon all distilled spirits sold in state is a "revenue act." Empire Vintage Co. v. Collins, 105 P. 2d 391, 395, 40 Cal. App. 2d 612.

4. Mere fact that bill relates to subject embraced in General Revenue Act does not make bill a "revenue bill." Dearborn v. Johnson, 173 So. 864, 234, Ala. 84.

5. The Beer Law provision requiring permit for right to sell beer is primarily a "police regulation" rather than a "revenue act" and relates to an occupation or business regarded as requiring substantial restrictions, supervision, and control, for the protection of the public welfare and morals. Soursos v. Mason City, 296 N.W. 807, 808, 230 Iowa 157.

6. The federal legislation imposing a tax on process or renovated butter and providing for the inspection, manufacture, storage, and marking of such butter is not solely a "revenue act." Cloverleaf Butter Co. v. Patterson, Ala., 62 S. Ct. 491, 499, 315 U. S. 148, 86 L.Ed. 754.

7. The National Prohibition Act, 27 U.S. C. A., Sec. 1 et seq., is not a "revenue act," Wolkin v. Gibney, D.C.N.Y., 3 F.2d 960.

8. Act establishing office of commissioner of licenses in certain counties held not "revenue bill." State v. Henry, 139 So. 278, 282, 224 Ala. 224.

9. Statute regulating practice of cosmetology held not "revenue bill." State v. Woodall, 142 So. 838, 839, 225 Ala. 178.

10. Proposed statute providing for increase in resident hunting and fishing license fees is a "regulatory" and not a "revenue" bill. In re Opinion of the Justices, 178 A. 620, 621, 133 Me. 537.

The courts have also drawn distinctions between license regulations and revenue raising measures. In Rock v. Phila. 127 Pa. Sup. Ct. 143, the court held that: "A revenue tax may not be imposed under the guise of a police regulation, and this principle applies equally to the state or a municipality as a subdivision thereof." The decree in the Rock Case was affirmed by the Supreme Court on the opinion of Judge Cunningham of the Superior Court: 328 Pa. 382, 196 A.59. In Flynn et al. v. Horst, 356 Pa. 20 the court cited the Rock Case with approval and cited this quotation from 37 Corpus Juris, section 9, at page 171: " ... A license or occupation tax, however, is imposed as a condition or as an element of the conditions upon the right to exercise a given privilege, its primary object being to regulate and control the business affected, and while the tax itself may not always be the sole condition, yet its payment is invariably made a part or a factor in the conditions upon which a business may be conducted. The character of a tax as a property tax or a license or occupation tax must be determined by its incidents, and from

the natural and legal effect of the language employed in the act or ordinance, and not by the name by which it is described, or by the mode adopted in fixing its amount. If it is clearly a property tax, it will be so regarded, even though nominally and in form it is a license or occupation tax; and, on the other hand, if the tax is levied upon persons on account of their business, it will be construed as a license or occupation tax, even though it is graduated according to the property used in such business, or on the gross receipts of the business."

In Tenn. v. Anderson, 144 Tenn. 564, 234 S.W. 768, 19 A.L.R. 180, which has been twice cited with approval by our courts, the distinction between a license regulation and a tax imposed for revenue is set forth at length. (See also Cooley on Taxation 4th Ed. Vol. 4, page 3552, Sec. 1809.)

The word "appropriation" has been construed by our courts and the Attorney General on numerous occasions. In Com. v. Perkins, 342 Pa. 529, the court stated: "(a) As we understand the word 'appropriation', when used in the constitutional or legislative sense, it means a designation of money raised by taxation to be withdrawn from the public treasury for a specifically designated purpose. ...." This definition was drawn with respect to Article III, Section 18 of the Constitution, prohibiting appropriations for benevolent purposes. It is in this sense that the definition limits itself to tax revenues. The same principle

was stated in 358 Pa. 309 concerning the disposition of funds received in administering the Bituminous Coal Open Pit Conservation Act.

It should be noted that in Cummings v. City of Scranton, 348 Pa. 538, 542 (1944), the court held: "An appropriation is the setting apart and establishing out of the general resources . . . created largely by taxation, a certain fund for a particular purpose."

Article III, Section 16 of the Constitution, provides that no money shall be paid out of the treasury except upon appropriations made by law. It should be noted that the Constitution uses the word "money" which would necessarily include all revenues which are deposited in the State Treasury.

The Attorney General has held that an appropriation act need not follow any particular form and that the commitment of public funds amounts to an appropriation whether or not the word "appropriate" is used. Official Opinion No. 59, 1958; Official Opinion No. 101, 1958; Memorandum Opinion No. 12, 1958; Official Opinion No. 126, 1958.

It should be noted that other than the requirement that money in the treasury be spent by appropriation, the Constitution concerns itself only with limitations upon the power of the Legislature to appropriate. There is no limitation on what may be included within an appropriation bill except, of course, the provision that a general appropriation act may not contain general legislation. Therefore, we are not likely to find any

cases distinguishing an appropriation bill from a bill of general legislation. We do though find authority from other states. In determining whether a bill appropriating money for the erection of a capital building was an "appropriation bill" or not, it was contended that if an unrestricted meaning be given to the word appropriation, all bills providing for the appropriation of money, however incidental, are appropriation bills. This, however, is not necessarily conceded. It is true that all general appropriation bills provide money for the expenses of government and public institutions and incidentally may provide for the application of the appropriation, and specify the purchase of materials required in running the same, and how it shall be done, yet such incidental specifications do not deprive the appropriation bill of its nature as general, and it was held that the act in question which provides money to be used by a board already existing with mature powers to proceed constitutes an appropriation bill. State v. Rogers, 64 P. 515, 516, 24 Wash. 417.

The term "appropriation act" obviously would not include an act of general legislation, and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation.

An appropriation bill is one, the primary and specific aim of which is, to make appropriations of money from the public treasury. To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident thereof. Dorsey v. Petrott, 13 A. 2nd 630, 178 Md. 230.

In 1935, the Constitution of the Commonwealth of the Philippines and the act of Congress authorizing the same, contained a provision similar to Article IV, Section 16 of the Constitution of Pennsylvania permitting the Governor to partially approve items of appropriation. In Bengzon, v. secretary, 299 U. S. 410, 81 L.Ed. 312, the Supreme Court of the United States held that an act providing for payment of retirement gratuities to governmental officers and employes was not an appropriation bill within the meaning of that provision of the Constitution even though it carried an item of appropriation and the Governor did not have the power to disapprove a part of the act as distinguished from disapproving a part of an appropriation. In this case the court used the same language used in the Dorsey case quoted above.

The same problem has not arisen under our Constitution.