

Opinion No. 43-4207

January 4, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Burton Roach, Senator, 13th Senatorial District, Comprising Counties, Socorro, Sierra, Grant, Luna and Hidalgo

We are in receipt of your letter of January 2, 1943, in which you ask various questions concerning the legality of a short session of the Legislature. Your first question is as follows:

"Can the Legislature, by the agreement of both houses, adjourn prior to the termination of the 30 day period, provided by Article 4, Section 5, of the New Mexico Constitution, as the duration of the first term of the Legislature, such adjournment to last until the time provided by this section, for the reconvening of the Legislature for the second term?"

In answer to this question I direct your attention to Article 4, Section 14 of the New Mexico Constitution, which Section is as follows:

"Neither house shall, without the consent of the other, adjourn for more than three days, Sundays excepted; nor to any other place than that where the two houses are sitting; and on the day of the final adjournment they shall adjourn at twelve o'clock, noon."

It will be noted that under this Section neither house shall adjourn for more than three days without the consent of the other. Thus, it appears to me that if both houses concur, an adjournment for a longer period could be effected. Since there is no other constitutional provision limiting the right of the legislature to adjourn, it is my opinion that your first question should be answered in the affirmative.

Your second question is as follows:

"Could the same procedure be effected for the last session so that, for example, the Legislature adjourn at the end of the 15th day?"

I believe, what has been said above sufficiently answers this question as the same constitutional provision applies.

Your next question is as follows:

"Would it be legal to introduce and act on all bills provided they are **submitted for immediate Legislative action by the Governor accompanied by a special message setting forth the facts making such action necessary for the general welfare**, and adjourn "sine die" during the first thirty day period?"

I note, that in framing your question, the underlined portion is a direct quotation of Article 4, Section 5, New Mexico Constitution as amended November 5th, 1940, which section is in part as follows:

"Each regular session of the legislature shall begin at 12:00 noon on the second Tuesday of January next after each general election and shall remain in session not to exceed sixty days. Such session shall be divided into a first term of thirty days and a second term of thirty days, with a recess of thirty days between such terms. During the first term, all bills to be considered at the session shall be introduced, read not more than twice by title or in full, printed, and referred to the appropriate committee. No bill shall be placed upon its third reading or finally passed during its first term, except appropriations for expenses of the legislature and such measures as shall be submitted for immediate legislative action by the governor accompanied by a special message setting forth the facts making such action necessary for the general welfare."

In answer to this question I might say that there is a legal possibility that all necessary bills might be enacted in the manner outlined in your letter and the legislature then finally adjourn. However, as a practical matter this could be done only if the Governor and the members of the legislature were unanimous in what bills should be introduced and in their desire to adjourn when such bills were passed. Further, this would have the effect of defeating the intention of the people expressed in the constitutional provision hereinafter set forth. Yet, as you ask only if it is legal I will attempt to answer your question, but at the same time I will point out a few of the difficulties.

First of all every bill would have to be accompanied by a Special Message from the Governor setting forth facts making the immediate enactment of such bills necessary for the General Welfare. If this were done, and if, as to each bill so presented, the legislature found that under the facts set forth in the Special Message it was necessary for the General Welfare to immediately enact such legislation the same would be valid. I say this because it appears to me that the Supreme Court would not look into the Special Message and legislative declaration to determine if in fact such immediate enactment was necessary in view of their holding in *Hutchens v. Jackson* 37 N.M. 325, P. (2d) 355. In that case it was contended that a law passed under the so called emergency clause provision of Article 4, Section 23 of the Constitution did not in fact present an emergency.

There the Court held that:

"The legislative declaration of an emergency contained in an act is final, and is conclusive and binding upon the court."

Thus, if all necessary bills were passed in this manner, the legislature could adjourn for the balance of the first term and by failing to return for the second term for all practical purposes terminate the session.

However, each legislator, would have the right to introduce any bill he saw fit, whether accompanied by a Special Message from the Governor or not. Further, since by the Section set forth above, two terms of the legislature are provided for with a recess in between an adjournment "sine die" even though favorably voted upon by a majority of the members of both houses, would not be binding, since it would be in violation of the constitution and so beyond their power. Thus, all legislators who wished could return at the time provided for the second session and if less than a quorum were present compel the attendance of absent members by virtue of Article 4, Section 7 of the Constitution, hereinafter set forth.

In view of the foregoing it is my opinion that while as a strictly legal proposition it might be possible to introduce and act upon all necessary bills in the manner suggested in your letter, and then finally adjourn. Yet, as the legislators by following such procedure would thereby evade the duty imposed upon them by the constitution, to enact legislation by the use of a split session with a thirty day recess between the two terms, and would raise so many practical difficulties, it appears to me that it would not be wise to attempt such a course, and that the procedure outlined in answer to your question number one would be much better.

Your next question is as follows:

"If the Legislature should recess during the first thirty day period, would the members be entitled to the \$ 5.00 per diem for the full sixty day period?"

In answer to this question reference is made to Article 4, Section 10, which provides as follows:

"Each member of the legislature shall receive as compensation for his services the sum of five dollars for each **day's attendance** during each session and ten cents for each mile traveled in going to and returning from the seat of government by the usual traveled route, once each session, and he shall receive no other compensation, perquisite or allowance."

It will be seen on examining this Section that the five dollars per diem is payable only for the days the Legislators are in attendance. Thus, if the legislature adjourned prior to the termination of the full sixty (60) days the Legislators would not be in attendance for the remaining period and so would not be entitled to any compensation for these days. Therefore, my opinion is that the answer to this question should be "no."

Your last question is as follows:

"If, by agreement of the members themselves, all but a few Legislators went home, could less than a quorum meet and adjourn from day to day until the legal end of the first term of the session is reached? How many members would have to be present to effect such adjournments?"

In answer to this question I refer you to Article 4, Section 7 of our Constitution, which provides in part:

"A majority of either house shall constitute a quorum to do business, but a less number may effect a temporary organization, adjourn from day to day, and compel the attendance of absent members."

By virtue of this provision less than a quorum could meet and adjourn from day to day, as suggested by this question. In this connection, however, attention is called to the right of the members present to compel the attendance of all absent members. It appears to me that any number of members, if that number is more than one, though less than a quorum would be sufficient for this purpose.

Hoping this sufficiently answers your inquiry.

By ROBERT W. WARD,

Asst. Atty. General

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