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STATUTES- CONSTITUTIONAL LAW - LEGISLATIVE ACTION AT SPECIAL SESSION LIMITED BY GOVERNOR'S MESSAGE

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STATUTES — CONSTITUTIONAL LAW — LEGISLATIVE ACTION AT SPECIAL SESSION LIMITED BY GOVERNOR'S MESSAGE — At a special session called by the executive to consider, among other matters, a bill "providing for the validation of bonds issued by a municipality under sufficient popular vote regardless of technical requirements," the legislature enacted a statute permitting validation of bonds even when issued without legal power, and the bill was approved by the governor. Pursuant to the statute, the common council of Detroit, in order to refund the city's bonded debt, approved the validity of the old obligations of the municipality, and petitioned for a writ of *mandamus* to compel the city controller to issue the refunding bonds voted for. *Held*, that the writ should be denied on the ground that the validation law was not included within the governor's message and therefore it violated the provision of the Michigan Constitution which requires that "no bill shall be passed at a special session of the legislature or any other subjects than those expressly stated in the governor's proclamation or submitted by special message."¹ *Smith v. Curran*, 268 Mich. 366, 256 N. W. 453 (1934).

¹ Michigan Constitution, Art. 5, sec. 22 (1908).

Where there are no constitutional restrictions upon the authority of the legislature in a special session called by the governor, the legislature may enact any law that it can legally pass at a regular session.² Most states, however, have constitutional provisions limiting legislative action³ to the subjects expressly stated in the governor's proclamation or submitted by a special message.⁴ The purposes of these provisions are to notify the public that certain subjects are to be considered so that any interested persons may be present if they wish, and to impose a check upon legislative action so that rights and interests will not be acted upon, by special sessions, without notice.⁵ Whether an extraordinary occasion exists necessitating a call for a special session and what subjects should be considered by the legislature are solely questions for the executive, and his discretion is not subject to review by the courts.⁶ If he wants to submit additional matters, he may make supplementary proclamations or messages.⁷ Or if he changes his mind about the need of the session, he may revoke the call.⁸ While the governor may limit the subjects which the legislature may consider, and may define a subject so as to make it broad⁹ or narrow, and any statutes not relating to the restricted subject-matter will be void,¹⁰ even though he subsequently approves of them,¹¹ he cannot

² *State v. Majors*, 16 Kan. 440 (1876); *Morford v. Unger*, 8 Iowa 82 (1859); *Woessner v. Bullock*, 176 Ind. 166, 93 N. E. 1057 (1911); *State v. Fair*, 35 Wash. 127, 76 Pac. 731 (1904).

³ The Senate may confirm appointments of the governor while in special session for another purpose, inasmuch as that is not legislation. *People ex rel. Knight v. Blanding*, 63 Cal. 333 (1883).

⁴ See I LEWIS' SUTHERLAND, *STATUTORY CONSTRUCTION*, 2d ed., sec. 65, p. 111 (1904).

⁵ *Fayette County v. County Commissioners*, 18 Pa. Dist. 217 (1908); 25 R. C. L. 805 (1919).

⁶ *Farrelly v. Cole*, 60 Kan. 356, 56 Pac. 492, 44 L. R. A. 464 (1899); *Denver & R. G. R. R. v. Moss*, 50 Colo. 282, 115 Pac. 696 (1911); *Bunger v. State*, 146 Ga. 672, 92 S. E. 72 (1917).

⁷ *Foster v. Graves*, 168 Ark. 1033, 275 S. W. 653 (1925); *Pittsburg's Petition*, 217 Pa. 227, 66 Atl. 348 (1907). But see *Sims v. Weldon*, 165 Ark. 13, 263 S. W. 42 (1924).

⁸ *People ex rel. Tennant v. Parker*, 3 Neb. 409, 19 Am. Rep. 634 (1873).

⁹ But if language setting forth the subject-matter to be considered is so broad that in reality the legislature is left to choose the subject-matter, no legislation is competent since no legislation has been named. *State ex rel. Rice v. Edwards*, (Mo. 1922) 241 S. W. 945; *Denver & R. G. R. R. v. Moss*, 50 Colo. 282, 115 Pac. 696 (1911).

¹⁰ *Bedford Corp. v. Price*, 112 W. Va. 674, 166 S. E. 380 (1932); *Davidson v. Moorman*, 2 Heisk. (49 Tenn.) 575 (1871); *Wells v. Missouri Pacific Ry.*, 110 Mo. 286, 19 S. W. 530, 15 L. R. A. 847 (1892); *Sims v. Weldon*, 165 Ark. 13, 263 S. W. 42 (1924); *Bunger v. State*, 146 Ga. 672, 92 S. E. 72 (1917); *State ex rel. Swirczynski v. Key*, 121 Okla. 64, 247 Pac. 656 (1926); *Ex parte Fulton*, 86 Tex. Cr. 149, 215 S. W. 331 (1919); *State ex rel. v. Woollen*, 128 Tenn. 456, 161 S. W. 1006, Ann. Cas. 1915c 465 (1913); *State v. Pugh*, 31 Ariz. 317, 252 Pac. 1018 (1927); *State ex rel. Ach v. Braden*, 125 Ohio St. 307, 181 N. E. 138 (1932).

¹¹ *Long v. State*, 58 Tex. Cr. 209, 127 S. W. 208, 21 Ann. Cas. 405 (1910); *Manor Casino v. State*, (Tex. Civ. App. 1896) 34 S. W. 769; *Wells v. Missouri Pa-*

dictate to the legislature the details of the subject-matter.¹² Whether the enactment of the legislature falls within the subjects submitted by the governor¹³ is a judicial question.¹⁴ The court will consider the whole proclamation or message,¹⁵ and every presumption will be made in favor of the validity of the statute.¹⁶ Each case turns upon the particular words of the governor's message.¹⁷ In the principal case, since the message narrowly limited the legislature to one particular type of municipal bonds, it would seem that the court was right in declaring that a statute validating another kind of bonds was invalid as outside the scope of subjects designated.

J. W. C.

cific Ry., 110 Mo. 286, 19 S. W. 530 (1892); *Jones v. State*, 154 Ark. 288, 242 S. W. 377 (1922); *Jones v. State*, 151 Ga. 502, 107 S. E. 765 (1921).

¹² *State ex rel. Ach v. Braden*, 125 Ohio St. 307, 181 N. E. 138 (1932); *State Note Board v. State ex rel. Attorney General*, 186 Ark. 605, 54 S. W. (2d) 696 (1932); *State ex rel. Anaconda Copper Min. Co. v. Clancy*, 30 Mont. 529, 77 Pac. 312 (1904); *Commonwealth ex rel. v. Liveright*, 308 Pa. 35, 161 Atl. 697 (1932); *In re Governor's Proclamation*, 19 Colo. 333, 35 Pac. 530 (1894); *Sims v. Weldon*, 165 Ark. 13, 263 S. W. 42 (1924).

¹³ Courts will take judicial notice of governor's proclamation to determine this question. *Wells v. Missouri Pacific Ry.*, 110 Mo. 286, 19 S. W. 530, 15 L. R. A. 847 (1892). But see *Ball v. Presidio County*, (Tex. Civ. App. 1894) 27 S. W. 702, reversed 88 Tex. 60, 29 S. W. 1042 (1895).

¹⁴ *Sims v. Weldon*, 165 Ark. 13, 263 S. W. 42 (1924).

¹⁵ *Chicago, B. & Q. Ry. v. Wolfe*, 61 Neb. 502, 86 N. W. 441 (1901); *In re Likens*, 223 Pa. 468, 72 Atl. 862 (1909); *City of Rockwood v. Rodgers*, 154 Tenn. 638, 290 S. W. 381 (1926).

¹⁶ *State Note Board v. State ex rel. Attorney General*, 186 Ark. 605, 54 S. W. (2d) 696 (1932); *Long v. State*, 58 Tex. Cr. 209, 127 S. W. 208, 21 Ann. Cas. 405 (1910); *Commonwealth ex rel. v. Liveright*, 308 Pa. 35, 161 Atl. 697 (1932).

¹⁷ For a group of cases illustrating different situations, see 59 C. J. 528-530 (1932).