

4. INTERPRETATION OF SECTION 33 OF ART. 3 OF THE CONSTITUTION WHICH REQUIRES THAT REVENUE-RAISING MEASURES ORIGINATE IN THE HOUSE. — The house was considering S.B. 15 to allow pari-mutuel wagering in Texas. Mr. David Hudson raised a point of order against further consideration of S.B. 15 in that it violates Article III, Section 33, of the Texas Constitution, which states that all bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as it may other bills.

Speaker Gib Lewis's ruling follows:

"Generally, a bill for raising revenue is a bill the primary purpose of which is to levy a tax on the public to defray the actual costs of the government and for which the public does not receive a specific benefit in return. If the primary purpose of a bill does not involve raising revenue, but the bill contains a provision that incidentally raises revenue, the bill is not a revenue-raising bill within the meaning of Article III, Section 33.

The chair feels that the subject of S.B. 15 is to allow pari-mutuel wagering in Texas and is not a measure the primary purpose of which is to raise revenue and therefore is not a revenue-raising bill within the meaning of Article III, Section 33.

Therefore, the chair respectfully overrules the point of order." (69 H.J. 2nd C.S. 189 (1986)).

SPECIAL SESSION — LEGISLATION THAT MAY BE CONSIDERED

EXPLANATORY NOTES

1. Section 40 of Article 3 of the state constitution reads in applicable part:

"When the Legislature 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, or presented to them by the Governor."

Traditionally, it has been held that the legislature has broad discretion within the boundaries of the subjects submitted by the governor during a called session. The speaker is required to determine from time to time whether specific items of legislation are within the parameters of the subjects the governor has submitted. In making these determinations, the speaker is guided by the practice consistently followed by presiding officers of the house and permits the broadest latitude of legislative consideration within the limits of the constitution. Only with free and open consideration of all the issues raised by the subjects the governor has laid before the legislature can representative government function as the framers of our constitution intended. See the House precedents below for further information on this matter.

2. In called sessions occurring in recent years two distinct plans of procedure have been followed by speakers in dealing with bills embodying subjects not submitted by the governors in their calls or messages. Under the first plan, which is current practice, the speaker gives all introduced bills a first reading and then refers them to appropriate committees without regard as to whether they fit within the stated purposes of the called session. This procedure does not diminish

the right of a member to later challenge a measure on the ground that it does not relate to a subject submitted by the governor. This procedure does, however, activate the important committee operations of the house and has proven in the past to expedite significantly the consideration of subjects that the governor may later submit to a called session.

Under the second plan, which follows strictly the provisions of the constitution, the speaker reviews all bills filed with the chief clerk, or coming from the senate, to determine if their subject matter has been submitted by the governor. He will then admit to first reading only those that are so covered. The reasoning behind this plan is that it may protect both members of the legislature and the governor from needless and often unfair pressures.

It is generally conceded that if a bill, not within the governor's call or later submissions, is passed by the legislature and signed or filed by the governor (not vetoed), it will become law.

3. It is uniformly held that the subject matter of house and concurrent resolutions does not have to be submitted by the governor before they can be considered at a special session. See Rule 10, Sec. 7.

HOUSE PRECEDENTS

1. DECISIONS REGARDING SUBJECT MATTER ALLOWED UNDER GOVERNOR'S CALL AT A SPECIAL SESSION; ALSO TEST OF WHETHER OR NOT SUBJECT MATTER OF AMENDMENTS COME UNDER GOVERNOR'S CALL. — Mr. John R. Lee raised the point of order that an amendment to H.B. 6 by Mr. Murray Watson did not come within the call of the governor convening the special session. Speaker Waggoner Carr's ruling follows:

“Article 3, Sec. 40 of the Constitution of Texas reads as follows:

‘When the Legislature 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, or presented to them by the Governor.’

There are several court decisions interpreting Art. 3, Sec. 40 that have a direct bearing on this question.

1. It was not the intention of this section to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects. *Brown vs. State*, 32 Cr. App., 133; 22 S.W., 601; *Long vs. State*, 58 Cr. App., 209; 127 S.W., 208.

2. It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be. *Brown vs. State*, 32 Cr. App., 133; 22 S.W., 601.

3. This section of the Constitution does not require the proclamation of the Governor to define the character or scope of legislation, but only in a general way to present the subjects for legislation. *Long vs. State*, 58 Cr. App., 209; 127 S.W., 208.

4. The Constitution does not require the proclamation of the Governor to define the character or scope of legislation which may be enacted at a special session but only in a general way to present the subjects for legislation, and thus confine the business to a particular field

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which may be covered in such way as the legislature may determine. *Baldwin v. State*, 21 Tex. App. 591; 3 S.W. 109; *Devereaux v. City of Brownsville* (C.C.) 29 Fed. 742.

5. Governor's proclamation or messages, submitting subject of legislation to special session under Art. 3, Sec. 40, need not state the details of the legislation to be considered; such matters being within the discretion of Legislature.

The gist of these opinions is that the legislature is not held to strict interpretation of 'subject' submitted in the Governor's call, but rather that it has the authority to determine the specific details of legislation as long as they come generally within the call. And it seems clear that the Governor could not restrict the legislature to a particular bill or plan of legislation.

Item 4 of the Governor's proclamation concerning this session reads as follows:

4. 'To create and finance a statewide water planning agency to work in cooperation with State, local and Federal agencies in conducting research and planning for an over-all program of water conservation and flood control with authority to contract for water conservation storage in Federal reservoirs to be paid for out of revenue.'

Establishment of the precedent of having to rule on whether or not such amendment offered comes within the Governor's call would be cumbersome and useless. Rather, it would seem the part of reason to apply the rule that if a bill is within the Governor's call then it would follow logically that any germane amendment falls within the call. Germaneness would then become the critical tests as to whether or not an amendment comes within the Governor's call, so long, of course, as the bill itself comes within the Governor's call.

With regard to the Watson amendment to the committee amendment, the Chair has heretofore refused to rule it out as not germane, realizing at the time that the question was close, since H.B. 6 and Committee Amendment No. 1 have within their provisions a reaffirmation, at least, of a portion of the present law dealing with 200-acre-feet reservoirs, thereby exposing such provision to amendment.

In this case, the bill appears clearly within the Governor's call. Consequently, the point of order that the amendment does not fall within the call of the Governor is respectfully overruled."

2. **DECISION RELATING TO WHETHER BILL CAME WITHIN GOVERNOR'S CALL PASSED TO HOUSE.** — In the 55th Legislature, 1st Called Session, the speaker, Mr. Carr, in the light of a unique set of circumstances, and under a rarely-used procedure, passed directly to the house the decision as to whether or not a particular bill came within the governor's call. (55 1st C.S. 156 (1957)).

3. **DECISION REGARDING SUBJECT MATTER ALLOWED UNDER GOVERNOR'S CALL AT A SPECIAL SESSION.** — Mr. David Hudson raised a point of order against further consideration of S.B. 15 in that it violates Article IV, Section 8, and Article III, Section 40 of the Texas Constitution.

Speaker Gib Lewis's ruling follows:

"Article IV, Section 8, of the Texas Constitution requires the governor, when convening the legislature in called session, to specify the purposes for which the session is convened.

Article III, Section 40, of the constitution restricts the scope of legislative consideration to bills and proposed constitutional amendments embraced by those subjects that the governor submits. Within the boundaries of these subjects, however, this body has broad discretion. It is the legislature's responsibility to determine the manner in which these subjects are to be addressed.

The chair may be required to determine from time to time whether specific items of legislation are within the parameters of the subjects the governor has submitted. In making these determinations, the chair will be guided by the practice consistently followed by presiding officers of this house and permit the broadest latitude of legislative consideration within the limitations of the constitution. Only with free and open consideration of all the issues raised by the subjects the governor has laid before us can representative government function as the framers of our constitution intended.

As a general rule, legislative power is plenary except when the constitution has imposed limits on it. When limitations such as Article III, Section 40, are imposed, they are an exception to the general rule and must be strictly construed. *Long v. State*, 127 S.W. 208 (Tex. Crim. App. 1910).

Strict construction of the governor's power under Article III, Section 40, results in three conclusions: (1) that the limitations imposed by the governor's proclamation calling a special session do not restrict the general power of the legislature unless the limitations clearly inhibit the act in question; (2) that the governor may not limit the legislature to detailed legislation rather than a general subject; and (3) that the legislature has broad power to determine what the subject is.

As an example, in *Baldwin v. State*, 3 S.W. 109 (Tex. Civ. App. 1886), a defendant found guilty of failing to pay an occupation tax attacked the constitutionality of the statute imposing the tax on the ground that it was not included in the subjects contained in the proclamation convening the special session at which it was enacted. The proclamation stated that one of the purposes for the special session was "to reduce the taxes, both ad valorem and occupation, so far as it may be found consistent with the support of an efficient state government." The court found that the proclamation embraced the whole subject of taxation and that the governor's proclamation merely called attention to the subject on which legislation was desired. Thus, the statute imposing a tax was upheld as being authorized by a proclamation that spoke only to reducing taxes.

The chair has been asked the question of whether revenue enhancement bills, such as pari-mutuel wagering, are now within the call submitted by the governor in light of his proclamations.

The chair feels that the subject submitted by the governor is legislation concerning state finance and necessarily includes revenue enhancement measures as well as reduced spending. Because of court decisions such as *Baldwin v. State*, and legislative precedent, it naturally follows that a measure which enhances revenue deals with the subject of state finance in that the effect is to raise money. The chair respectfully overrules the point of order." (69 H.J. 2nd C.S. 189 (1986)).