Public Law: Legislative Process

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LEGISLATIVE PROCESS

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LOCAL OR SPECIAL LEGISLATION

The Louisiana Constitution of 1974, like its predecessor, contains a prohibition against local or special legislation on enumerated subjects. Such a prohibition, common in state constitutions, is intended to reflect a policy decision that legislative resources and attention should be concentrated upon matters of general interest, and that purely local matters should be left to local governing authorities.

There has been in the past some confusion of the terms local and special. "Local" laws are those that operate only in a particular locality or localities without the possibility of extending their coverage to other areas should the requisite criteria of statutory classification exist there. A "special" law is one that confers particular privileges, or imposes peculiar disabilities or burdensome conditions in the exercise of a common right upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law. Either type of law on the subjects enumerated in the two Louisiana constitutions would be unconstitutional, but the two types clearly are not the same.

One prohibited subject common to both the 1921 and the 1974 constitutions is "changing the law of descent or succession" or "giving effect to informal or invalid wills or deeds or to any illegal disposition of property." In Teachers' Retirement System v. Vial, the Louisiana Supreme Court sustained legislation permitting members of the teachers' retirement system to dispose of benefits due from the system by mere

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2. See, e.g., ARIZ. CONST. art. IV, pt. 2 § 19.
7. 317 So. 2d 179 (La. 1975).
completion of a printed form, not in the form of a will, and without being subject to the Civil Code rules on forced portions. One ground of the attack had been that the statute permitting such disposal was local or special. The court held that the statute was not restricted in its application to any particular locale, or to any particular group of teachers; it accordingly rejected the argument. The decision contains a brief but informative discussion of local or special legislation.8

One of the continuing problems in the field of local or special legislation has been the controversy over whether the sale of intoxicating liquors of varying alcoholic content ought to be permitted in the various parishes. Although a detailed examination of this intricate problem cannot be undertaken at this juncture, several remarks can be made about the recent decision in Nomey v. State.9 At issue in Nomey was the constitutionality of Act 41 of 1974, purporting to authorize a parish-wide referendum, upon the petition of 25% of the qualified voters, on four different questions relating to the permitted sale of beverages of varying alcoholic content. The same act stated in a second section that the parish-wide referendum on the four questions was authorized only in 12 enumerated parishes.10 Voters in the remaining parishes could not conduct a referendum that would be binding parish-wide; if they conducted a referendum in a ward or an incorporated municipality, the referendum was limited specifically to three of the four questions.11

The Louisiana Supreme Court granted supervisory writs to examine the propriety of a temporary restraining order issued by a district court enjoining an election under Act 41, which the district court called “patently unconstitutional.”12 Apparently on the basis that the statute was local in character because “its parish-wide application”13 was limited to 12 parishes, and that the subject matter was within the prohibitions of the Louisiana Constitution of 1921,14 the Louisiana

8. Id. at 182-83.
9. 315 So. 2d 709 (La. 1975).
10. The parishes were Beauregard, Washington, Rapides, Natchitoches, Red River, Grant, LaSalle, East Carroll, West Carroll, Bienville, Jackson and Winn.
12. The Louisiana Supreme Court quotes the district court’s language in its opinion at 315 So. 2d at 711.
13. 315 So. 2d at 712.
14. As pointed out by Mr. Chief Justice Sanders in his dissent, the Con-
Supreme Court held that the statute was unconstitutional.\textsuperscript{15} There were two strong dissents, one of which raised the question of whether the numerous "Orleans Parish excepted" statutes found in Louisiana statute books might be placed in jeopardy because of the majority's opinion: "If geographical exceptions to state-wide statutes render them invalid, then many statutes on the books reciting 'Orleans Parish excepted' are in jeopardy."\textsuperscript{16}

It is respectfully suggested that the "Orleans Parish excepted" statutes are not based upon geographical determinations, but on population, a rather common and accepted means of distinguishing among classes singled out in legislation.\textsuperscript{17} This is not at all to say that the legislative technique of treating Orleans Parish in a separate category is wise. It is also not to say that geography might never be considered a reasonable basis for classification in legislation, including some areas and excluding others.\textsuperscript{18} But any classification—geography, population, or whatever—must be reasonable, "based on a substantial difference between the class created and the subjects excluded."\textsuperscript{19} The delineation by named parishes in Act 41, when those parishes are scattered from Washington Parish in the extreme southeast to Beauregard in the extreme southwest to East and West Carroll in the extreme northeast, does not seem to be based upon such a substantial difference.

Two observations are pertinent concerning the common legislative technique in Louisiana of excepting Orleans Parish. One may define a category by use of population figures (\textit{e.g.,} "In all parishes with a population in excess of 450,000 . . .") rather than by specific enumeration of the parish in question. As long as the criteria for the population class do not set the institution of 1974 was not yet in effect when the controversy in question arose, and thus the provisions of the Constitution of 1921 were the operative provisions.

\textsuperscript{15} The court also based its conclusion of unconstitutionality on equal protection grounds.

\textsuperscript{16} 315 So. 2d at 715.

\textsuperscript{17} See, \textit{e.g.}, Farrington v. Pickney, 1 N.Y.2d 74, 133 N.E.2d 817 (1956).

\textsuperscript{18} See discussion in State v. Guidry, 247 La. 631, 173 So. 2d 192 (1965) (court upheld a criminal trespass statute, applicable only in Jefferson Davis Parish, that had been passed prior to the specific prohibition in the present constitution against local or special legislation "defining any crime"); LA. CONST. art. III, § 12. \textit{See also} discussion in text at note 22, infra.

prohibit subsequent entrance of other cities that reach the specified population, the legislation does not lose its character as a “general” statute. In fact, this technique seems to be in increasing use in Louisiana. Also, it may be time to re-examine the treatment of any single parish as disproportionately larger than the others in population, since current census figures reveal that the enormous disparity between the population of Orleans and that of other parishes is rapidly disappearing.

Definition of Crime

The Constitution of 1974 adds to the prohibited subjects of local or special legislation statutes “defining any crime.” There is little doubt that this language, added as a floor amendment, was aimed at stopping the proliferation of criminal trespass statutes applicable only in designated parishes. This salutary effort, however, will be for naught if the legislature continues to pass acts such as Act 112 of 1975, defining criminal trespass in the parishes of Catahoula and Concordia. This act appears to conflict with the Constitution of 1974, casting grave doubt upon its validity.

There may also be some doubt about the validity of existing criminal trespass statutes applicable only in certain parishes, including Louisiana R.S. 14:63.1-63.11, in the light of the provisions of article XIV, § 18(B) of the Constitution of 1974: “Laws which are in conflict with this constitution shall cease upon its effective date.”

FISCAL SESSIONS

The Constitution of 1921 provided for alternating annual sessions of 60 days and 30 days, the latter occurring in odd-numbered years and being for the principal purpose of considering fiscal matters. It was possible to extend budget sessions to non-fiscal matters, but this required “the consent of
three-fourths of the elected members of each house."

The common legislative practice had been to achieve the required consent to introduce a bill by means of a concurrent resolution; if the resolution received three-fourths vote of the elected members, the bill was introduced and thereafter was handled in the normal course. Only a majority vote then was required for final passage.

A remark made by the Louisiana Supreme Court in *Sullins v. City of Shreveport* in 1968 cast doubt upon the validity of that procedure. According to the court's opinion in *Sullins*, the constitutional language "does not require the three-fourths vote to consider a non-fiscal matter, it requires three-fourths vote to enact a proposed non-fiscal matter." In fact, the 1921 constitution merely stated that "any proposal to extend" the session to non-fiscal matters required three-fourths consent.

The Louisiana Supreme Court had occasion during this past term to clarify the issue. In *State v. Reado*, the defendant's motion to quash an indictment for second-degree murder had been granted on the ground that the statute under which he was charged was passed in a fiscal session without a three-fourths vote in favor of the bill; the language in *Sullins* was cited as authority. Upon the state's appeal to the supreme court, the language in *Sullins* was properly "overruled" and the court correctly held that the statute in question was constitutional since it received a three-fourths vote to extend the session and a majority vote for final passage.

While it is true that the fiscal session has now passed into Louisiana constitutional history, since the Constitution of 1974 provides for annual 60-day sessions within an 85-day period, this does not eliminate possible constitutional attacks upon legislation passed under the Constitution of 1921. It is commendable that the Louisiana Supreme Court corrected its earlier misleading statement on the subject of non-fiscal legislation within fiscal sessions.

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24. La. Const. art. III, § 8 (1921): "[A]ny proposal to extend the budget session to matters other than those enumerated in this paragraph, whether proposed by the governor or by the legislature, shall require the consent of three-fourths of the elected members of each house. . . ."

25. 252 La. 423, 211 So. 2d 314 (1968).

26. *Id.* at 428, 211 So. 2d at 317.

27. 295 So. 2d 440 (La. 1974).

28. *Id.* at 443.

EXTRAORDINARY SESSIONS

Although a fiscal session could be extended to non-fiscal matters under the Constitution of 1921, no provision existed to extend an extraordinary session beyond the call for the session,\(^{30}\) and there is none in the new constitution.\(^{31}\) However, there was a provision in the 1921 constitution mandating the calling of an extraordinary session upon the vote of two-thirds of the elected members of the legislature,\(^{32}\) a vote reduced by the 1974 constitution to a majority.\(^{33}\) During the first extraordinary session of 1975, an effort was made to use this procedure to call a "special session within a special session" to consider a subject not within the governor's call for the special session. The effort failed, and the legislature, in Act 50 of that same session, provided that "when either the governor or the legislature has called an extraordinary session of the legislature, neither the governor nor the legislature shall call another extraordinary session to overlap or run concurrently with the first extraordinary session."\(^{34}\) Although the intention of this language is clear and the concept probably desirable, it might be argued that it runs counter to the plain language of the Constitution of 1974, which states that the legislature "shall be convened by the presiding officers of both houses upon written petition of a majority of the elected members of each house," without qualification.\(^{35}\)

LEGISLATIVE DAY

In its first decision interpreting the legislative article of the Constitution of 1974,\(^{36}\) the Louisiana Supreme Court was asked to examine the new concept of a "legislative day" and determine what actions the legislature might appropriately take on such a day. The new constitution provides that, in its

\(^{31}\) LA. CONST. art. III, § 2: "The power to legislate shall be limited, under penalty of nullity, to the objects specifically enumerated in the proclamation. . . ."
\(^{32}\) La. Const. art. V, § 14 (1921).
\(^{33}\) La. Const. art. III, § 2(B).
\(^{35}\) Perhaps it is of significance that the verb used is "convened," and it could be argued that the provision cannot apply when the legislature is already in session, since it cannot then be "convened" in the literal sense.
\(^{36}\) Hainkel v. Henry, 313 So. 2d 577 (La. 1975) (interpreting LA. CONST. art. III).
regular session each year, the legislature shall meet for not more than 60 legislative days during a period of 85 calendar days, a legislative day being "a calendar day on which either house is in session." 37

Two legislators posed several issues in a suit seeking a declaratory judgment, brought to the Louisiana Supreme Court under its supervisory jurisdiction. The first issue was whether a day on which legislative committees were meeting but neither house was in session would constitute a legislative day. Inferentially recognizing that legislative committees are not identical with the full house, and in fact only make recommendations to be acted upon by the full house, the court correctly held that such a day would not constitute a legislative day.

The second issue was linked to the first: if such a day is not a "legislative day," may a committee validly meet and take action upon a bill on that day? The court noted that no constitutional provision prohibits committee meetings on non-legislative days, and that the legislature is described in the constitution as a continuous body for the purpose of permitting committees to meet and act when the legislature is not in session. 38 The court might also have added that article III, §1 of the Constitution of 1974 states that the "legislative power of the state is vested" in the legislature, a statement usually taken to mean that anything normally forming a part of the powers of a legislative body and not specifically prohibited by the constitution may properly be undertaken by the legislature. 39 Certainly the meeting of committees is a normal power, and there is no reason at all why these committees cannot meet on any day, whether the legislature itself is in session or not. 40

37. LA. CONST. art. III, § 2(A).
38. 313 So. 2d at 580.
39. See, e.g., the treatment given to the investigative powers of legislat- ing bodies, and the conclusion that these powers are inherent within the legislative power unless specifically excluded or limited. H. READ, J. MAC- DONALD, J. FORDHAM & W. PIERCE, LEGISLATION 318 (3d ed. 1973).
40. On the remaining issue, the court held that on any legislative day during the first fifteen calendar days prior to the eight-day recess mandated by LA. CONST. art. XIV, §7, either house may consider and finally pass a bill.