Opinion No. 23-3677

March 1, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. Coe Howard and Hon. Edgar F. Puryear, Members House of Representatives

A House Quorum Being Present and Acting Concurrence of Two Thirds of such Meets Requirement of the Constitution to Adopt Emergency Clause to Any Bill.

OPINION

*{*22}* You ask that this office construe the meaning of the term "two-thirds vote of each House" in Sec. 23, Art. 4, of the State Constitution which provides: "* * * any act necessary for the preservation of the public peace, health or safety, shall take effect immediately upon its passage and approval, provided it be passed by two-thirds vote of each House and such necessity be stated in a separate section."

A quorum being present and acting, we think the concurrence of two-thirds of such meets the requirements of the Constitution to adopt the emergency clause. This provision of the Constitution does not mean that two-thirds of all members **elected** to the House must concur.

In our opinion, the South Carolina case of Smith v. Jennings, 45 S. C., 821, and cases there cited, present the correct view of this question. Slightly paraphrasing the Court's opinion on the question, we have the following:

While the Constitution, in Section 3 of Article 4, declares that the House of Representatives shall consist of forty-nine members, it also declares, in Section 7 of Article 4, that a majority of either House shall constitute a quorum to do business. A quorum, therefore, possesses the power of the whole body in all matters of business wherein the action of a larger proportion of the entire membership is not clearly and separately required. So, ordinarily, when a quorum is present acting, the House is present, acting in all its potentiality. When the Constitution speaks of "two-thirds of that House" as a vote required to pass a bill carrying the emergency clause, it means two-thirds of the House, as then legally constituted, and acting upon the matter. Whenever the framers of the Constitution intended otherwise, the purpose was expressly declared, as in Section 35, of Article 4, "a concurrence of a majority of all the members elected shall be necessary to the proper exercise thereof," (meaning impeachment of a member), and in Section 1 of Article 19, wherein proposing amendments to the Constitution, "a majority of all members elected to each of the two Houses voting separately" must agree thereto. Other cases in point and holding the same are:

*{*23}* Farmers' Union Warehouse Co. v. McIntosh, (Ala.) 56 So., 102;

M. K. & T. Ry. Co. v. Simons (Kan.) 88 Pac., 554, and cases and authorities there cited.

The only case we have found, holding a contrary view, is State v. Gould, (Minn.) 17 N. W., 276. The only excuse offered by the Court in this case for not holding with other authorities is that the Minnesota Constitution differs from others considered by the Court. In speaking of other authorities, the Court, in the Minnesota case, states:

"We think that none of the Constitutions to which they relate require (as does ours) a majority vote of all the members elect to pass a law. This is, in our opinion, a decisive distinction."