

vised, any amendment to the Constitution can be proposed at this Session whether or not it comes within a subject stated by the Governor in his proclamation.

House Bill No. 37, Imposing a Tax on Incomes. This bill does not come within any subject stated by the Governor in either of his proclamations and would, therefore, be unconstitutional, if enacted. As the bill would clearly be unconstitutional for the reason stated, it is unnecessary to consider and advise you upon the question whether a graduated income tax could be enacted under our present Constitution.

Very truly yours,

DEPARTMENT OF JUSTICE,
WM. A. SCHNADER,
Attorney General.

OPINION NO. 32-B

Legislature—House of Representatives—Constitutionality of House Bills Nos. 38 to 41 inclusive—Extraordinary Session of 1931.

The Attorney General advises the Speaker of the House of Representatives regarding the constitutionality of House Bills Nos. 38 to 41 inclusive. Extraordinary Session of 1931.

Department of Justice,
Harrisburg, Pa., November 24, 1931.

Honorable C. J. Goodnough, Speaker of the House of Representatives,
Harrisburg, Pennsylvania.

Sir: In accordance with the resolution of the House of Representatives adopted November 10, 1931, I shall give you my opinion as to the constitutionality of House Bill Nos. 38 and 41 inclusive, all introduced on November 17, 1931, but printed copies of which did not come to me until yesterday. That accounts for my failure to have included a discussion of these bills in my communication forwarded to you yesterday covering other bills introduced in the House last week.

House Bill No. 38, Prohibiting Any Officers of the State Government from Denying Any Person Employment in the State Service on Account of His or Her Age. This bill does not come within any of the subjects specified by the Governor in his original and supplemental proclamations convening the Special Session, and would, therefore, be unconstitutional if passed.

House Bill No. 39, Imposing a State Tax upon Sales of Cosmetics. Like House Bill No. 38, this bill does not come within any of the sub-

jects stated by the Governor in his proclamations. Therefore it cannot validly be enacted at this Special Session.

House Bill No. 40, Providing that the Department of Highways Shall Take over Certain Roads within Boroughs for Construction and Maintenance. Subject No. 7 of the Governor's original proclamation convening the Special Session is, "Authorizing the Department of Highways with the approval of the Governor and of the political subdivisions involved to enter upon and construct, reconstruct, or resurface wholly or partially at State expense any public roads, streets, and highways which are now constructed and maintained at the expense of the several political subdivisions of the Commonwealth, and making an appropriation for this purpose."

Under this subject the General Assembly can at this Session enact legislation authorizing the Department of Highways to "enter upon and construct, reconstruct, or resurface" any streets or highways in Pennsylvania. It could not authorize the Department to take over streets or highways for maintenance purposes.

The bill under consideration provides not merely for the construction, reconstruction, or resurfacing of certain borough streets but that they shall be taken over as State highways for all purposes. In my opinion this is a departure from the subject stated by the Governor. Accordingly, I am of the opinion that the bill, if passed, would be unconstitutional.

House Bill No. 41, Creating a "State Board of Trustees on Unemployment Relief and the Restoration of Industrial and Commercial Stability in Pennsylvania," and Prescribing its Powers and Duties. In my opinion this bill comes within Subject No. 1 of the Governor's original proclamation convening the Special Session.

However, even though the bill comes within a subject stated by the Governor in his call for the Special Session, it would, in my opinion, be unconstitutional legislation if enacted. I shall state my reasons.

Section 3 of the bill provides that the Chief Justice of the Supreme Court of Pennsylvania shall appoint one of the members of the Board of Trustees. This would be a violation of Article V, Section 21 of the Constitution, which provides that "No duties shall be imposed by law upon the Supreme Court or any of the judges thereof except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided." Nowhere in the Constitution is provision made for appointment, by the Chief Justice, of a member of a board of trustees such as that which this bill proposes to create.

A more fundamental objection to the bill is that the board of trustees which it creates would be authorized to receive contributions "from any and all persons willing to loan on the credit of this Com-

monwealth * * * sums of money," to give receipts "for such moneys accepted as a loan to this Commonwealth," and to issue for moneys received, obligations of the Commonwealth in the form of bonds known as "Industry Bonds." This provision is one of the basic provisions of the bill and clearly violates Article IX, Section 4 of the Constitution, which prohibits the creation by or on behalf of the State of any debt except to supply casual deficiencies of revenue, repeal invasion, suppress insurrection, defend the State in war, or pay existing debt, or for improving or rebuilding the highways of the Commonwealth.

Furthermore, Section 24 of the bill provides that the board of trustees shall have the power to use the money borrowed upon the credit of the Commonwealth for the purpose, among others, of loaning to any employer, association, firm, copartnership, or corporation "such sum or sums in whole or in part as in their judgment * * * may be considered sufficient to enable such industry to resume its business," taking from the borrower certain types of security. This provision would be a violation of Article IX, Section 6 of the Constitution, which provides that the credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation, or association.

Very truly yours,

DEPARTMENT OF JUSTICE,
WM. A. SCHNADER,
Attorney General.

OPINION NO. 32-C

Legislature—House of Representatives—Constitutionality of House Bills Nos. 42 to 57 inclusive; 59 to 61 inclusive; 64 to 68 inclusive, Extraordinary Session of 1931.

The Attorney General advises the Speaker of the House of Representatives regarding the constitutionality of House Bills Nos. 42 to 57 inclusive; 59 to 61 inclusive; 64 to 68 inclusive. Extraordinary Session of 1931.

Department of Justice,
Harrisburg, Pa., November 30, 1931.

Honorable C. J. Goodnough, Speaker of the House of Representatives,
Harrisburg, Pennsylvania.

Sir: In accordance with the resolution of the House of Representatives adopted November 10, 1931, I shall give you my opinion as to the constitutionality of House Bills Nos. 42 to 68 inclusive.