

OPINIONS OF THE ATTORNEY GENERAL

OFFICIAL OPINION NO. 84-3

Governor—Sunset Review Resolutions Under Act of December 22, 1981, P.L. 508, No. 142, as amended—Gubernatorial Action Required Under Article III, § 9 of the Pennsylvania Constitution.

1. Sunset Review Resolutions passed by the General Assembly pursuant to the provisions of § 7(b) of the Sunset Act of 1981 and presented to the Governor should be approved or disapproved by the Governor.
2. Resolutions passed by the House of Representatives and the Senate pursuant to § 7(b) of the Sunset Act of 1981 are resolutions "to which the concurrence of both Houses may be necessary" within the meaning of Article III, § 9 of the Pennsylvania Constitution.
3. The provisions of Article III, § 9 of the Constitution attach only to such resolutions as are legislative in character.
4. Sunset Review Resolutions are legislative in character in that they commit the Commonwealth to both the continued existence of the agencies and the continued performance of their functions and duties.

December 28, 1984

The Honorable Dick Thornburgh
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Thornburgh:

You have asked my opinion regarding what action, if any, should be taken on six Sunset Review Resolutions adopted by the General Assembly on November 28 and 29, 1984, pursuant to Section 7(b) of the Sunset Act of 1981, Act of December 22, 1981, P.L. 508, No. 142, *as amended*, 71 P.S. § 1795.7(b). Sunset Review Resolution No. 14 (S.R.R. 14) continues in existence the Citizens Advisory Council (DER), S.R.R. 15 continues the Environmental Quality Board, S.R.R. 17 continues the Labor Relations Board, S.R.R. 18 continues the Securities Commission, S.R.R. 19 continues the Board of Private Trade Schools and S.R.R. 21 continues in existence the State Workmen's Insurance Board.

Specifically, you have requested that I advise you whether these resolutions, having been presented to you, require action by you pursuant to Article III, § 9 of the Constitution of Pennsylvania.

It is my opinion and you are hereby advised that you must take action to approve or disapprove these resolutions pursuant to the Pennsylvania Constitution.

The Sunset Act, Act of December 22, 1981, P.L. 508, No. 142, *as amended*, 71 P.S. § 1795.1 *et seq.* is a validly enacted statute. Section 7 of the statute provides in pertinent part that:

(a) Any agency scheduled for termination under this act, may be reestablished by the General Assembly by legislation . . .
and

(b) Unless legislation is enacted prior to November 1 reestablishing an agency as provided in subsection (a), the presiding officer of each House shall cause to be placed on their respective calendars for the first legislative day in November, the question, in the form of a resolution, of whether an agency scheduled for termination on December 31 of that year shall be continued. If a majority of the members elected to each House approve such a resolution prior to the scheduled termination date of December 31, the agency shall be continued until the next review and termination cycle scheduled for said agency.

The statute thus provides alternate methods for the reestablishing or continuation of an agency scheduled for demise in December of any given year.

1. By legislation, in which case the normal requisites of legislation, contained in Article III of the Constitution, including *inter alia*, referral to committee, printing, consideration of bills, concurring in amendments, signing, and submission to the governor for approval or veto, would apply, or
2. By each house voting upon resolutions which the presiding officer of each House is obliged to place on their respective calendars for the first legislative day in November. If a majority of the members elected to each house approves such resolutions prior to December 31, the agency (by the terms of the statute) shall be continued.

Article III, § 9 of the Pennsylvania Constitution reads as follows:

Every order, resolution or vote, *to which the concurrence of both Houses may be necessary*, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-

thirds of both Houses according to the rules and limitations prescribed in case of a bill (emphasis added).

This constitutional requirement would not appear to apply to a Section 7(b) continuation resolution unless that resolution is one “to which the concurrence of both Houses may be necessary.” *Black’s Law Dictionary* 263 (Revised 5th Ed. 1981) defines the term “concurrent” to mean:

Running together; having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of the same course; contributing to the same event; contemporaneous.

Based on the definition of the term “concurrent,” the actions of House and Senate in adopting Sunset Resolutions clearly “run together” and are based upon “the same authority.” They are taken “in conjunction,” result in agreement “in the same act or opinion,” contribute to “the same event” and are “contemporaneous.” Under the provisions of Section 7(b), the passage of any of these resolutions by either the Senate or the House is of no legal effect absent passage by the other body.

Finally, in order to determine whether these resolutions are required to be presented to the Governor for approval or disapproval, the nature of the subject resolutions must be reviewed. Under the case law of this Commonwealth, the requirements of Article III, § 9 of the Pennsylvania Constitution attach only to resolutions which are legislative in character.

The earliest Pennsylvania case addressing the problem of whether an action is legislative is *Commonwealth ex rel. v. Griest*, 196 Pa. 396, 46 A. 505 (1900). The *Griest* case arose when the Governor attempted to veto proposed constitutional amendments providing for voter registration. The Secretary of the Commonwealth, W. W. Griest, refused to certify the proposed amendment for printing as part of the 1900 General Election ballot. The Supreme Court concluded that the constitutional provision which requires the Governor to approve concurrent resolutions “is confined exclusively to the subject of legislation” and does not control “over the subject of ‘future amendments,’” *Griest*, 196 Pa. at 408, 46 A. at 507. The Court stated that the language applies only to “orders, resolutions and votes . . . such as relate to and are a part of the business of legislation,” *Griest*, 196 Pa. at 409, 46 A. at 508.

The question of the appropriate scope of the Governor’s review authority over legislative resolutions was later discussed in *Russ v. Commonwealth*, 210 Pa. 544, 60 A. 169 (1905). This case involved a concurrent resolution which was approved by a two-thirds vote in the legislature after a veto by the

Governor. The resolution provided that both Houses of the General Assembly would attend the dedication in New York City of a monument erected in memory of General U. S. Grant and that the Committees on Military Affairs in the House and Senate would be responsible for "all matters pertaining to such attendance." Pursuant to this resolution the committees entered into a contract with a caterer in New York. *Russ*, the caterer, sued for nonpayment of the contract. The Dauphin County Court of Common Pleas denied the claim because the resolution did not confer upon the committee the power to enter into the contract. The Pennsylvania Supreme Court reversed the lower court in part because the resolution was "sent to the governor for his approval, because it must have been regarded by those who passed it as committing the state to it, and, if so, it was a matter in the nature of legislation." *Russ*, 210 Pa. at 551, 60 A. at 171. The Supreme Court held that legislative resolutions require executive approval but that resolutions dealing only with internal legislative matters do not require such approval. The resolution was held to be legislative in nature because it authorized "special committees . . . to act on behalf of the state" and was approved by both Houses. *Id.*

The *Griest* and *Russ* decisions were interpreted by Attorney General Francis Brown for Governor Martin Brumbaugh in 1915 (Op. Atty. Gen., June 9, 1915, p. 2). The Attorney General reviewed eighteen concurrent and joint resolutions and concluded that "not all joint or concurrent resolutions . . . must be submitted to the Governor for his approval, but only such as make legislation or have the effect of legislating, i.e., enacting, repealing or amending laws or statutes or which have the effect of committing the State to a certain action . . ."

In *Fabrizio v. Koprivier*, 73 Dauph. 345 (1959), the Dauphin County Court sitting as Commonwealth Court defined the type of resolutions requiring submission under Article III, § 9. The Court stated that the "term 'resolution' as used in Article III, § 26 [now § 9], contemplates legislative action which commits the Commonwealth." The Court continued:

In other words, a resolution which is in the nature of legislative action committing the State comes within the contemplation of Article III, § 26, because the Governor must give his approval to any such commitment. However, if the resolution amounts to nothing more than a formal expression of an opinion and concerns itself with the transaction of the business of the General Assembly, and does not commit the State to any affirmative action, then such a resolution would not be within the purview of Article III, § 26.

The subject resolutions commit the Commonwealth to a specific course of action. Section 6(a) of the Sunset Act provides that the agencies scheduled for termination, together with their corresponding statutory functions and duties, shall terminate all activities and go out of existence upon their sunset date. The effect of the resolutions is thus to commit the Commonwealth to continue not only the agencies scheduled for termination, but also to continue the performance of the functions and duties which those agencies carry out on behalf of the Commonwealth. The resolutions are express substitutes for the passage of a new act. They extend for up to ten years the existence of an agency and the performance of its functions.

For the reasons stated above, it is my opinion and you are hereby advised that the subject resolutions must be approved or disapproved by you pursuant to Article III, § 9 of the Constitution.

You are further advised that in accordance with Section 204(a)(1) of the Commonwealth Attorneys Act, 71 P.S. § 732-204(a)(1), you will not in any way be liable for following the advice set forth in this opinion.

Very truly yours,

LEROY S. ZIMMERMAN
Attorney General

OFFICIAL OPINION NO. 85-1

Liquor Control Board—Enforcement Officers—Use and Possession of Blackjacks—Crimes Code § 908—Act 78 of 1983.

1. Clause 5 of § 908(d) of the Crimes Code, added by Act 78 of 1983, exempts from the prohibition on use or possession of blackjacks only police officers employed by the Commonwealth who have satisfactorily met the requirements of the Municipal Police Education and Training Law.
2. Liquor Control Board enforcement officers are not required to complete training under the Municipal Police Education and Training Act.
3. Liquor Control Board enforcement officers are “peace officers” with limited police power and not “police officers” with general power of arrest.
4. Liquor Control Board enforcement officers are not authorized to use or carry blackjacks under the provisions of § 908(d)(5) of the Crimes Code.