

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

ROD BLAGOJEVICH, Governor of the State
of Illinois, in his official capacity,

Plaintiff,

vs.

MICHAEL J. MADIGAN, Speaker of the
Illinois House of Representatives, in his official
capacity, and TOM CROSS, Minority Leader of
the Illinois House of Representatives, in his
official capacity,

Defendants.

No. 2007-MR-473



ORDER

Cause called for hearing on Plaintiff and Defendants' Cross Motions for Summary Judgment. After review of the arguments of counsel, applicable statutes, case law and briefs submitted, the Court rules as follows:

The question at issue arises from a dispute between Governor Rod Blagojevich and House Speaker Michael Madigan over who has authority under Article IV, Section (5)(b) of the Illinois Constitution's Special Sessions Act to set the date and time for special legislative sessions called by the Governor.

The authority of the Governor to call a special session and convene the General Assembly by the filing of a proclamation with a specific purpose with the Illinois Secretary of State is not in controversy.

The only narrow question for interpretation by this Court is whether the Governor, under Article IV, Section 5(b) and or the Special Sessions Act, has the sole authority to set the date and time of Special Sessions.

Speaker Madagin does not deny that the Governor may place a suggested date and time in his proclamation. He is at issue with the argument that the setting of the date and time by the Governor is exclusively his right under the Special Sessions Act. The Speaker argues that under Article IV, Section (6) (d), the General Assembly shall determine the rules of its proceedings including when the House will assemble for Special Sessions.

Since 1970, the Legislature has met on the date of the proclamation and at or near the time set except for three instances.

The Governor argues that previous legislatures have complied with the previous Governors' requests to convene and the Speaker argues that since 1972 the General Assembly has tried to accommodate governors as much as possible regarding the date and time of convening special sessions.

This issue, since enactment of the 1970 Constitution, has never risen between a sitting Governor and Speaker.

There is no Illinois case law on point on this subject. This Court has reviewed the legislative history behind the Special Sessions Act, as well as cases from numerous other states, including, but not limited to, Washington, Maine, Pennsylvania, Florida and Kentucky.

Numerous courts from other jurisdictions have discussed the Governor's power to convene and set the date and time of special or extraordinary sessions. In dicta, in numerous cases cited, the courts have interpreted the Governor's power to convene and to schedule said session for a date certain. In fact, courts have said to convene without the power to set a date certain would be meaningless. In Re: Opinion of the Justices, 12 A.2d 418 (Me. 1940).

In the case at bar, the sitting Governor has convened 17 special sessions with set dates and times. There have been roughly 30 special sessions since 1972 prior to the Plaintiff Governor's string of special sessions. The 17 sessions produced minimal or no substantive legislation and caused the House frustration. Speaker Madigan argues that the manner in which the Governor has excessively used the Special Sessions Act with set dates and times was intended to compel the House to stay in special sessions either to review portions of the Governor's legislative agenda or are punitive in nature for the Legislature's inaction as perceived by the Governor.

From a historical perspective, Governor Edgar on two separate occasions set special sessions either when the Legislature was in session and on a short notice basis. No judiciary interventions were sought in those instances.

Clearly, the drafters of the 1970 Constitution could not envision that an extraordinary act (Special Sessions Act), which gives the sitting Governor the power to convene both houses of the Legislative Branch of government, would be used unilaterally and in an abusive and capricious fashion. Unfortunately, the current Governor's aggressive use of this extraordinary power does not have a bearing on the statutory construction of the Act. This is really not about the current Governor or Speaker. This is about the authority of the Executive branch over the Legislative branch in setting dates and times to convene both Houses of the Legislative branch of government on special or extraordinary matters, i.e., 30-day budgets and property tax relief, just to name a few.

Based upon the legislative history of Article IV, Section (5) (b) and the Special Sessions Act and this Court's review of case law, arguments of counsel provided, this Court hereby rules that the Plaintiff, Governor Rod Blagojevich, has the right to set the date and time for both Houses of the Legislature to convene for special sessions upon the filing of a Proclamation with the Secretary of State.

Although the Plaintiff has only sought a declaration of rights under Article IV, Section (5) (b) and the Special Sessions Act, this Court would be remiss if it did not comment on the application of the setting of dates and times for Special Sessions by the Governor. A high degree of reasonableness and cooperation must be applied in these settings. The House has a fluid calendar, and there are numerous unforeseen circumstances which can occur making the House or Senate's strict compliance a problem at times.

The Governor needs to open meaningful lines of communication between himself and the Speaker. This would alleviate the problems of setting dates and times for his Special Sessions and alleviate conflicts due to the scheduling of other House business and the House running early or late in their general sessions. It is not the role of the judicial branch to serve on an ongoing basis as a truant officer assigned to police errant or tardy members of the Legislature. Perhaps the Legislature should look at the Special Sessions Act to determine what if any action is needed.


This ruling encompasses a very narrow legal interpretation of the Governor's rights under Article IV, Section (5) (b) Count I, and the Special Sessions Act, Count II. The decision articulated here should surprise no one, since the decision merely codifies what has been the practice in this State since the ratification of the 1970 Constitution of Illinois. This order is not intended to give either the Governor or Speaker Madigan an advantage in their ongoing rift. Throughout Illinois history, until now, this State's leaders have collaborated on special legislative sessions without resort to the judiciary. This Court can only hope the parties to this case will see fit to implement this order in a professional manner so as to carry out their important work on behalf of the People of the State of Illinois.

Therefore, Plaintiff's Motion for Summary Judgment as to Count I and II are granted. Defendant's Motions for Summary Judgment are denied. Defendant's affirmative defenses are without merit and will not be discussed at this time.

This is a final and appealable order.

Enter:

6/4/08


Leo J. Zappa, Jr.
Circuit Judge