

road coaches according to their race,¹⁵ providing each race is afforded equal accommodations without discrimination as to comfort, convenience, or safety. In *Berea College v. Kentucky*,¹⁶ the Supreme Court declared that a Kentucky statute permitting equal education to negroes and whites in the same private corporation but in different localities is not an abridgment of the Fourteenth Amendment to the Federal Constitution, the court emphasizing the fact that the social and economic rights of the two races may be equal without being identical, and that such a segregation is conducive to a promotion of harmonious toleration between the races. Where appropriate public schools are maintained for colored children, statutes excluding negroes from public schools established for whites are valid, provided equal facilities are afforded the schools of each race.¹⁷

JOSEPH R. BURCHAM, '28.

OPINION OF ATTORNEY GENERAL*

First, can the General Assembly, by concurrent resolution, provide for the appointment of a committee or commission to investigate the State Penitentiary to continue its work and make its report to the Governor, President Pro Tem of the Senate and the Speaker of the House after the adjournment of the General Assembly? As you very well know, the General Assembly has the right to investigate any state institution, and it may, by concurrent resolution, appoint a committee for that purpose, and may authorize such committee to summon witnesses, administer oaths, and require the production of books and papers, and this has been done many times since 1875, the date of the adoption of the present state constitution. In 1879, in 1881 and in 1883 the General Assembly by concurrent resolution, appointed a committee to inquire into the affairs of the penitentiary, giving the committee authority to summon witnesses, administer oaths, and require the production of books and papers. In 1883, the General Assembly, by concurrent resolution, appointed a committee to inquire into the charges against the State School for the Blind, and it was given the same powers. In 1889, the General Assembly, by concurrent resolution, appointed a committee to investigate the management of the State University, and it was given the same powers. In 1897, the General Assembly, by concurrent resolution, appointed a committee to investigate the Kansas City Police Force, and it was given the same powers. In 1899, the General Assembly, by concurrent resolution, appointed a committee to investigate the municipal and state governments in St. Louis, and it was given the same powers. In 1911 the General Assembly, by concurrent resolution, appointed a committee to investigate the conduct of the State Game and Fish Warden, and it was given the same powers. In 1913, the General Assembly, by concurrent resolution, appointed a committee to investigate the State Poultry Board, and it was given the same powers.

¹⁵ *Plessey v. Ferguson*, 163 U. S. 554. ¹⁶ 211 U. S. 45.

¹⁷ *People v. Gallagher*, 93 N. Y. 438.

* An opinion given by North T. Gentry, Attorney General, to the Senate of Missouri.

In 1919, the General Assembly, by concurrent resolution appointed a committee to investigate the State Highway Commission and it was given the same powers. In every instance, however, the committee did its work and made its report before the adjournment of the General Assembly. I have found no instance in the legislative journals of this State since 1875 where a committee or commission was appointed, by concurrent resolution, to function after the adjournment of the General Assembly. On the contrary, in 1879, 1889, 1899, 1909 and 1919, when the statutes of our state were to be revised, each house of the General Assembly appointed a committee for that purpose, and the committee, acting under the authority of a concurrent resolution, continued to function until the adjournment of the General Assembly. Prior to such adjournment an act was passed by both houses and approved by the Governor, providing for the continuance of such committee and for its compensation after such adjournment. In 1919, Honorables R. S. McClintic, Von Mayes, James W. McKnight, Frank G. Harris, Walter C. Goodson, A. E. L. Gardner, Conway Elder, and Seth M. Young, members of the Senate, and Honorables D. F. Warren, Jones H. Parker, J. W. Campbell, Walter E. Bailey, S. F. O'Fallon, Frank C. Winkenson, Frank H. Farris and Nick T. Cave, members of the House, were members of such committee.

I find no decision of a Missouri court on this subject, but I do find three cases, one decided by the Supreme Court of Illinois, and one decided by the Supreme Court of Tennessee, and the other decided by the Supreme Court of Arkansas, which sustain my position. The Illinois Supreme Court, in discussing the constitutional right of the Legislature to appoint a committee to sit after the final adjournment of the Legislature and of the authority of the State Treasurer to pay the expenses incurred by such committee, said:

With the *sine die* adjournment of the legislature, all its functions as a legislative body cease. Its work is ended. It will not again be called into existence except on the call of the chief executive for a special purpose, and no presumption will be indulged that it will be again so called into being. During the sessions of the legislature either house may appoint separate committees, and the two houses acting concurrently, may appoint joint committees for any proper purpose, which may exercise such powers as the house or houses appointing them may lawfully delegate or impose. The only powers which can be conferred upon and delegated to such committees are such powers as are possessed by the house or houses making the appointment. As all the powers of the legislature, as such, cease upon its final adjournment, it must follow that all the powers which have been delegated by it, or either house thereof, to a committee by mere resolution cease also.

Fertus v. Russel, 270 Ill. 1. c. 344-5.

And the Arkansas Supreme Court said:

Under our constitution the legislature has no power, by concurrent resolution, to appoint committees or to continue committees already appointed for the purpose of making investigations after

the legislature has adjourned.

Dickinson v. Johnson, 176 S. W. Rep. 116.

And the same court, in the same case, further said:

Even if the legislature, by concurrent resolution, could have continued its committees after final adjournment, it could not, by resolution under the above provisions of the Constitution, appropriate the money necessary for the payment of the expenses of such committees out of the funds appropriated to pay the contingent expenses of the legislature. To do this would have required a bill making the specific appropriation.

And the Tennessee Supreme Court held that a joint resolution of the legislature, creating a committee to investigate the conduct of the president of a normal school, which was to function after the final adjournment of the legislature, was null and void, and afforded no authority to the committee attempting to act under it.

And the same rule is enunciated by eminent constitutional text writers. Cooley "Constitutional Limitations," 7th Ed., p. 193, and Cushing "Law and Practice of Legislative Assemblies," p. 738.

True, the Supreme Courts of some other states, notably Kansas and West Virginia, hold to the contrary, but I consider the reasoning of the Illinois, Tennessee and Arkansas courts to be much better, and the wording of the constitutions of some of the other states is different from that of the Constitution of Missouri.

Second, the Constitution of Missouri, Article 4, Section 16, provides for the payment of the members of the General Assembly and limits their pay to \$5.00 a day for the first seventy days of the session, except a revision session, and to \$1.00 per day for the remainder of the session. This section further provides that the committees of either house, or joint committees of both houses, appointed to examine state institutions, other than those at the seat of government, may receive their actual expenses. This constitutional provision does not authorize the members of such committee to receive any pay or expenses after the adjournment of the General Assembly, but prohibits such payment.

I am, therefore, of the opinion that the General Assembly cannot, by concurrent resolution, authorize the appointment of a committee or commission to examine the state penitentiary or to complete the work of such examination after the adjournment of the General Assembly, nor provide for the payment of the service of such commission after adjournment. But such investigation after adjournment of the Assembly can only be made by an act passed by both the Senate and House and approved by the Governor.

Since writing the above opinion, I have learned that Attorney General Jesse W. Barrett, in March, 1924, gave an opinion to Honorable William R. Painter, then President Pro Tem of the Missouri Senate, to the effect that the Senate Road Committee was not authorized to function after the *sine die* adjournment of the legislature, and that members of that committee could not be compelled to attend a meeting of such committee.