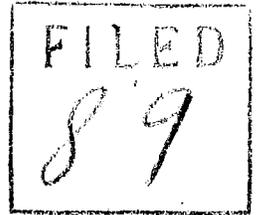


LEGISLATOR: It is unnecessary for Mr. David A. Peery to be sworn
MILEAGE: in as the Representative from Linn County. He is
OATH: entitled to and should be paid the mileage provided
for in Sec. 16, Art. III, of the Constitution.

January 27, 1947



Mr. C. J. Tindel, Chief Clerk
Missouri House of Representatives
Sixty-Fourth General Assembly
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting the official opinion of this department, and reading as follows:

"Mr. V. Earl Cox was elected November 5th, 1946 to the office of Representative of Linn County. He has not to this date qualified, but Mr. David A. Peery, former representative of the 63rd session is present and serving until his successor is qualified to take his seat. Please render your decision on the following questions:

"1. Shall Mr. David A. Peery be sworn in as the representative from Linn County?

"2. Shall Mr. David A. Peery be paid the mileage provided by Sec. 16, Art. III, Constitution of Missouri?"

We note that the following appears on page 7 of the Journal of the House, Sixty-Fourth General Assembly of the State of Missouri, First Day - Wednesday, January 8, 1947:

"The member from Linn, Honorable V. Earl Cox being sick and not appearing to qualify, Honorable D. A. Perry was reelected being without successor."

This action by the House of Representatives in reelected Mr. Peery is a determination by the said House of the fact that

Mr. Peery is now a member of the House of Representatives. This determination is correct, and Mr. Peery is entitled to be seated as a member of the House of Representatives by virtue of Article VII, Section 12, of the Constitution of 1945, which reads as follows:

"Except as provided in this Constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified."

and by virtue of the fact that Mr. Cox has not qualified as a member of the House of Representatives, as required by Article III, Section 15, of the Constitution of 1945, which provides, in part, as follows:

"Every senator or representative elect, before entering upon the duties of his office, shall take and subscribe the following oath or affirmation: 'I do solemnly swear, or affirm, that I will support the Constitution of the United States and of the State of Missouri, and faithfully perform the duties of my office, and that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.' The oath shall be administered in the halls of the respective houses to the members thereof, by a judge of the supreme court or a circuit court, or after the organization by the presiding officer of either house, and shall be filed in the office of the secretary of state. * * *"
(Emphasis ours.)

The first question in your request for an opinion is whether it is necessary for Mr. David A. Peery to take the oath of office.

Section 15 of Article IV of the Constitution of 1875 provided as follows:

"Every Senator and Representative elect, before entering upon the duties of his office, shall take and subscribe the following oath or affirmation: 'I do solemnly swear, or affirm, that I will support the

Constitution of the United States and of the State of Missouri, and faithfully perform the duties of my office; and that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.' The oath shall be administered in the halls of their respective houses, to the members thereof, by some judge of the Supreme court, or the circuit court, or the county court of Cole county, or after the organization by the presiding officer of either house, and shall be filed in the office of the Secretary of State. * * * "

The provisions of Article III, Section 15, of the Constitution of 1945, and Article IV, Section 15, of the Constitution of 1875, as to the form of oath to be administered, and the fact that such oath shall be taken by representatives elect, are the same. The oath that is taken is not as a representative in a particular general assembly, or a particular session of the general assembly, but is taken by a representative elect as a member of the house of representatives of this state.

Mr. Peery took the required oath as set out in Article III, Section 15, of the Constitution of 1945, and Article IV, Section 15, of the Constitution of 1875, as a representative elect in January, 1945, and holds office as a representative thereby. Since he is not a representative elect, but is holding over under the provisions of Article VII, Section 12, of the Constitution of 1945, it is not necessary that he be sworn in again.

We find that such conclusion is borne out by a legislative interpretation by the General Assembly of Missouri. On page 4 of the Journal of the Senate, Sixty-Fourth General Assembly of the State of Missouri, First Day - Wednesday, January 8, 1947, we find the following:

"The newly elected Senators advanced to the bar and subscribed to the oath of office, which was administered by Judge Laurance M. Hyde of the Supreme Court of Missouri."

Those senators who were elected in 1944 and took the oath in January, 1945, that is, "hold over senators," did not take the oath of office. The reason for this is that such members were

senators and are senators by virtue of their being sworn in in January, 1945, and because they were sworn in as senators, and not as senators of the 63rd General Assembly.

An examination of the House and Senate Journals of the 62nd General Assembly, Extra Session, 1944, discloses that the members of the respective houses were not sworn in as members of the Extra Session of the 62nd General Assembly, but were members thereof by virtue of their having been sworn in in January, 1943.

Since Mr. Peery is now a representative, there is no more reason for his being sworn in at the present session than there was for the members of the House of Representatives and Senate to be sworn in at the Extra Session of the 62nd General Assembly in 1944.

The second question you ask is: Shall Mr. Peery be paid the mileage provided by Section 16 of Article III of the Constitution?

Section 16 of Article III of the Constitution of 1945 provides as follows:

" * * * Senators and representatives shall receive one dollar for every ten miles traveled in going to and returning from their place of meeting, once in each session, on the most usual route."

Section 1 of House Bill No. 566 of the 63rd General Assembly, effective July 1, 1946, provides as follows:

"Senators and representatives shall receive one dollar for every ten miles traveled, and an amount for travel for any fractional part of ten miles at the same rate, in going to their place of meeting in Jefferson City from their place of residence, and returning from their place of meeting in Jefferson City to their place of residence, once in each regular session and once in each special session, on the most usual route."

By virtue of the authority of Section 20 of Article III of the Constitution of 1945, the 64th General Assembly is now meeting in regular session, which session began on January 8, 1947. It will be noted that Section 16 of Article III of the Constitution of 1945 and Section 1 of House Bill No. 566 of the 63rd General Assembly provide that each senator and representative

Mr. C. J. Tindel - 5

is entitled to mileage once during each session of the general assembly. The only requirement as to the right to receive such mileage is that the person shall be a senator or representative. Section 16 of Article III of the Constitution and Section 1 of House Bill No. 566 are clear in providing that each representative shall be paid mileage for every regular or special session of the general assembly.

Since Mr. Peery is now a representative and has been seated as a member of the House during the present session, he is entitled to mileage for the present regular session of the 64th General Assembly.

CONCLUSION

It is, therefore, the opinion of this department that it is unnecessary for Mr. David A. Peery to be sworn in as the Representative from Linn County.

It is further the opinion of this department that Mr. David A. Peery is entitled to and should be paid the mileage provided by Section 16 of Article III of the Constitution of Missouri of 1945.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR