

SENATE No. 2

The Commonwealth of Massachusetts.

To the Honorable the Senate of the Commonwealth of Massachusetts:

The justices of the Supreme Judicial Court, having considered the questions in the order of May 27, 1921, copy whereof is hereto annexed, respectfully submit these answers:

The Senate is required by c. 1, s. 2, art. VII of the Constitution to "choose its own president, appoint its own officers, and determine its own rules of proceedings." Neither this nor any other provision of the Constitution by express words fixes the term for the president or for any of the other officers of the Senate. From the adopting of the Constitution until the year nineteen hundred and twenty, senators were elected annually for a term expiring on the day preceding the first Wednesday of the second January after the annual state election at which they were chosen. C. 1, s. 2, arts. I, II, III. Amendments, arts. X and XV. It follows from these provisions that the officers of the Senate could not serve as a constitutional right for longer than the constitutional life of the Senate itself. The clerk of the House of Representatives of the United States by old usage is said to continue in a new Congress. It was almost inevitable that the membership of the Senate would be altered more or less with every annual election. Each member, whether elected for the first time or re-elected, sat by virtue of a fresh election. The official life of the Senate as a legislative body was thus limited to a single year.

The ratification and adoption of art. LXIV of the Amendments changed this. Biennial elections are thereby substituted for annual elections. The term of office of each senator

is two years in place of one year as theretofore. The official life of the Senate as a legislative body is thereby lengthened to two years instead of being limited to the one year previously established. The provision in s. 3, art. LXIV of the Amendments that "The general court shall assemble every year," does not break the continuity of the Senate as a legislative body. It simply assures two sessions of one legislative body. In this particular the two branches of the General Court now resemble the House of Representatives of the Congress of the United States, which although required by art. I, s. 4, of the Constitution to "assemble at least once in every year," is nevertheless a single continuous legislative body during the two years for which by s. 2 of the same article its members are chosen.

To the first question we answer that the Constitution does not require that the officers of the Senate be elected for each annual session, but they may be elected to serve throughout the two-year term of the General Court and until its dissolution.

The power conferred upon the Senate to "appoint its own officers, and determine its own rules of proceedings," by implication grants authority to fix the terms of such officers for periods not exceeding its own official life. That whole subject is within the control of the Senate.

To the second question the answer is that it is competent for the Senate by rule to limit the term of its officers to one year, or to provide that said term shall be coextensive with the period for which the Senate was elected.

The election of officers of the Senate by the votes shown in the journal of the Senate, copy of which accompanies the order, under the constitutional provisions to which reference has been made, in the absence of any rule fixing the term, imports that the several officers shall serve during the pleasure of the Senate. Unless contrary action is taken by the Senate, they serve during the life of the Senate as a legislative body.

The answer to the third question is that such officers will hold under the circumstances there stated for two years unless that term shall be shortened by vote of the Senate.

For convenience in answering these questions, the official term of the members of the Senate has been designated as two years, although speaking with strict accuracy, under art. LXIV of the Amendments to the Constitution, it extends from "the first Wednesday in January succeeding their election" "to the first Wednesday in January in the third year following their election and until their successors are chosen and qualified." The official existence of a particular Senate, and in the absence of a vote of contrary tenor of its president and its officers, precisely corresponds to these words of the Amendment.

The order submitting these questions was not transmitted to us until after the adjournment of the session of the General Court for 1921. Therefore the answers were not given precedence over other pressing work of the court but are returned before the reassembling of the Honorable Senate.

ARTHUR P. RUGG.
HENRY K. BRALEY.
CHARLES A. DECOURCY.
JOHN C. CROSBY.
EDWARD P. PIERCE.
JAMES B. CARROLL.
CHARLES F. JENNEY.

The Commonwealth of Massachusetts.

SENATE, May 27, 1921.

Whereas, The Constitution of the Commonwealth provides in Article VII of Section II, Chapter I, that the Senate shall choose its own president, appoint its own officers and determine its own rules of proceedings, and

Whereas, Acting in pursuance of said provision, the Senate did, on the fifth day of January, nineteen hundred and twenty-one, elect a president and other officers, as appears from the journal of the Senate, a copy of which for said date is hereto annexed, and

Whereas, Grave doubt exists as to whether the officers so elected are the duly elected officers of the Senate for the entire term of the members thereof, as defined in Article LXIV of the amendments to the Constitution, or whether the Constitution requires that they be elected for each annual session, therefore be it

Ordered, That the Senate require the opinions of the Honorable the Justices of the Supreme Judicial Court on the following important questions of law: —

1. Does the Constitution require that the officers of the Senate be elected for each annual session, or may they be elected to serve throughout the two-year term of the General Court and until its dissolution?

2. Is it competent for the Senate by rule to limit the term of its officers to one year or may its rules provide that said term shall be coextensive with the period for which the Senate was elected?

3. In the absence of any rule defining their respective terms, and in the absence of any provision defining the term in the vote by which they were elected, would such officers hold for one year or for two years?

HENRY D. COOLIDGE,

Clerk.