

SPECIAL SESSION

JOURNAL OF THE FLORIDA SENATE

Tuesday, November 30, 1971

The Senate was called to order by the President at 10:00 a.m. A quorum present—43:

Mr. President Deeb Johnson (34th) Reuter
Arnold de la Parte Karl Saunders
Barron Ducker Knopke Saylor
Barrow Fincher Lewis (33rd) Scarborough
Beaufort Graham Lewis (43rd) Stolzenburg
Bishop Gunter McClain Trask
Boyd Haverfield Myers Ware
Brantley Henderson Ott Weissenborn
Broxson Hollahan Plante Williams
Childers Horne Pope Wilson
Daniel Johnson (29th) Poston

Excused: Senators Brannen and Gong.

Prayer by Senator Williams:

God, we know the responsibility that is ours. Give us the will and the wisdom to weigh all sides of these questions and the courage to cast our votes for the right as you lead us to see the right. Amen.

The Journal of November 29 was corrected and approved as follows:

Page 7, counting from the bottom of column 2, line 17, strike "Transportation and"

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator de la Parte, by two-thirds vote, SB 10-D was withdrawn from the Committee on Ways and Means and placed on the Calendar.

SECOND READING

SB 10-D—A bill to be entitled An act relating to taxation; amending subsection 212.08(7), Florida Statutes, by adding subsection (i) to provide an exemption from sales and use taxes for household utilities; providing an effective date.

—was read the second time by title.

On motion by Senator de la Parte, further consideration of SB 10-D was deferred and retained on second reading without dissent.

On motion by Senator Karl, by two-thirds vote, the Senate reverted to—

REPORTS OF COMMITTEES

By direction of the President, the Secretary read the following report of the select committee appointed on November 1 to advise the Senate regarding a request by Senator Brannen in his letter to the President dated October 22, 1971:

Honorable Jerry Thomas November 30, 1971
President of the Senate
The Capitol
Tallahassee, Florida

Dear President Thomas:

By letter dated November 1, 1971, you reconstituted a select committee of the undersigned senators and instructed that committee to advise you so that a report can be made to the

membership of the Senate as to the request of Senator Brannen contained in his letter of October 22, 1971. A copy of his letter is attached.

Senator Robert F. Brannen was elected State Senator in District 28 on November 3, 1970. Subsequently, he was allowed to take the oath of office and assume his seat in the Senate.

On April 8, 1971, a Grand Jury in United States District Court, Middle District of Florida, Tampa Division, presented a true bill in which it is alleged that Senator Brannen violated certain laws of the United States. The offense involved is a felony.

Thereafter, on April 13, 1971, Senator Brannen requested that he be excused from his senate duties, under the authority of Senate Rule 1.21, to permit him to prepare his defense to the criminal charges. His request was granted, he was excused for the 1971 regular session, and he has remained in that status. His letter of October 22, 1971, discloses his intention to return to the Senate. His attorney has indicated he intends to take his seat on November 30, 1971, following the presentation of this report.

It is the opinion of the Committee that, notwithstanding the indictment, unless some action is taken by Senator Brannen or by the Florida Senate to interrupt or terminate his service in the Senate he has the constitutional right to exercise all of the powers and authority of a State Senator. That is to say, the indictment does not automatically cause his suspension or removal from office, and no officer or body, except the Senate, has the right or power to suspend, expel or remove him.

The Senate is not now involved in a determination of the qualifications of Senator Brannen. By permitting him to take the oath and be seated in the Senate following his election, his qualifications to hold the office have been admitted.

Senator Brannen has indicated that he does not intend to interrupt or terminate his service, so the question arises as to what the Senate is constitutionally authorized to do.

Obviously, the Senate may take no action at all. Senator Brannen has been indicted—not convicted. He is entitled to the presumption of innocence until and unless he is convicted in lawful proceedings. So there is no constitutional mandate of any kind. The validity of Senate action could not be challenged because of the presence and participation by a member under indictment.

But, the Senate may take action if it elects to do so. Article III, Section 4(d) provides:

"Each house may punish a member for contempt or disorderly conduct and, by a two-thirds vote of its membership, may expel a member."

While the authority to expel a member seems absolute and unrestricted, the Federal courts have indicated in various cases that the power of the Legislature to deal with its own members is subject to review by the courts. And, in the case of W. G. McCarley v. Sanders, the United States District Court in Alabama held that a state senator may not be expelled unless he is accorded due process. Thus, we are of the opinion that the Senate cannot lawfully expel a member without first providing him with notice, a full hearing and other elements of due process.

Whether the Senate, after a full hearing and having provided due process, can lawfully expel Senator Brannen if it finds him guilty of some or all of the charges placed against him by the grand jury, is a question that has divided the committee and can only be resolved by an amendment to the constitution or by judicial interpretation. If, after hearing the evidence, two-thirds (2/3) of the members vote to expel, the question may be resolved in court.

If the Senate wishes to proceed with a hearing on the question of whether Senator Brannen should be expelled, a motion to expel him should be made. That motion should be referred to a standing or select committee with instructions to report to the Senate, or the full Senate should undertake to hear the evidence.

The constitution is silent on the question of the Senate's right to suspend a member. It has been argued that in the absence of specific authority there is no suspension power. On the other hand it is argued that if the Senate has the power to expel, it necessarily has the power to suspend. Again, if the Senate votes to undertake a procedure to determine whether Senator Brannen should be expelled and votes to suspend him pending such determination, a judicial determination can be made.

It is, therefore, our opinion that the options available to the Senate in this case are:

- (a) Take no action at this time, thereby permitting Senator Brannen to take his seat, debate and vote;
- (b) Refer a motion to expel to a standing or select committee to receive evidence and report to the full Senate, permitting Senator Brannen to take his seat and participate pending the final action of the Senate;
- (c) Set a time for the full Senate to receive evidence (similar to an impeachment trial), permitting Senator Brannen to take his seat and participate pending the completion of the proceedings;
- (d) Take the action in either (b) or (c) but suspend Senator Brannen's privileges to speak or vote on any measure or matter pending before the Senate or any of its committees and withhold his pay and allowances during such period.

Respectfully submitted,

FREDERICK B. KARL
MALLORY E. HORNE
WARREN S. HENDERSON
VERLE A. POPE
DEMPSEY J. BARRON

The Honorable Jerry Thomas, President October 22, 1971
The Florida Senate
The Capitol
Tallahassee, Florida 32304

Dear President Thomas:

At the time that I was indicted by a United States Grand Jury for alleged violations of the income tax laws, you appointed a committee to study and report what action, if any, the Senate should or could take.

While the committee was reviewing the situation, I decided that from my point of view the most desirable course of action was to immediately commence preparation for trial and press for a speedy trial. (See pages 97 and 98 of the Journal of the Senate, Tuesday, April 13, 1971.) Since the session had seven weeks to run, I felt that I could not give up that much time from the preparation of my trial and still be ready to defend myself at a speedy trial. Under the circumstances I asked for and was granted by you a leave of absence pursuant to Senate Rule 1.21.

Since that time, I have been working with my attorneys, and we have accomplished the task of preparing to try the case. In the meantime my attorneys have continuously pressed for a speedy trial.

It now appears likely that these efforts are going to be unsuccessful, although my attorney has persistently reminded all concerned about this problem:

- (a) This was brought up before the Court on July 2.
- (b) On July 23, I filed a Motion for Speedy Trial.
- (c) On July 31, they wrote Judge Krentzman about this problem in relation to the date for discovery of evidence.
- (d) On August 6, the Court advised them that it was granting the Motion for Speedy Trial.
- (e) On August 9, this was confirmed by written Order.
- (f) On August 17, they filed a Memorandum Brief on the issue of disclosure of evidence by me, reiterating the time problem.
- (g) On September 17, having received no specific date for trial, they conferred with Judge Krentzman. At that

time he advised them that he would contact the Chief Judge to see about the appointment of a Judge to try the case.

- (h) On September 27, they had another conference with Judge Krentzman. At that time he told them that Judge Young was on vacation and that he would have more information for them around October 5.
- (i) On September 29, they had a telephone conversation (conference) with Mr. Smith, who is assigned to the case from the Tampa - U. S. Attorney's office, and they advised him of these conferences and reminded him of the urgency of this matter.
- (j) They wrote the U. S. Attorney asking his help in this on October 2.
- (k) On October 8, the U. S. Attorney wrote them that Judge Krentzman would not get a judge.
- (l) On October 12, filed a Motion to Implement the Order Granting Speedy Trial.
- (m) On October 19, the Judge entered an Order saying I would be tried around January 10, 1972.
- (n) On October 22, I filed a Motion asking for assignment of any member of the Federal judiciary to try my case on November 1, 1971.
- (o) I will take all other steps necessary to achieve this end. I enclose evidence of these actions.

This case will take approximately two months to try, which means unless it goes to trial before November 1, 1971, it will not be over before the first of January, 1972.

As you know, I have steadfastly maintained my innocence, but in the event I am convicted I would resign my office so that someone else, not under the cloud of a conviction could represent my people while I appealed the conviction.

A special election to fill my seat would require approximately one month, thus, unless the case gets to court by November 1, 1971, I must choose between three courses:

- (1) Continuing to absent myself from the Senate;
- (2) Resigning my seat in the Senate; or
- (3) Returning to the Senate while the charges are pending.

The reason that I absented myself was to prepare for trial. Now that I am prepared for trial, the absence is no longer necessary. In that situation, I do not feel it appropriate for me to continue to absent myself from the Senate.

In light of the fact that some persons would presume I was guilty were I to resign, I do not wish to follow that course of action. Therefore, I would like to return to the Senate and in that connection I would request that you have the appropriate committee advise you on the position the Senate should take.

My attorneys advise me that the only legal course the Senate can follow is to allow me to resume sitting or to try me on the tax charges. This is the law because it would grossly violate the separation of the executive branch from the legislative branch, if the Governor could suspend and make interim legislative appointments. If the Senate, itself, could suspend, there would be no official representative of my constituency to appoint an interim successor. Therefore, I can only be expelled by a trial of my peers in the Senate, which would thus permit a special election to fill the vacancy.

I am determined that my constituents will be represented at the 1972 session of the legislature, therefore, I would appreciate being advised of the views of the appropriate Senate committee so that I can make an informed decision as to the course of action I need to follow.

I would like to impress upon you, that I deny the charges and that I have literally moved heaven and earth so as to avoid this dilemma. I have this problem because of reasons totally beyond my control.

In closing, I would like to say that I am continuing in every way possible to get to trial. I sincerely regret that this problem

has arisen but I, personally, am very disappointed to learn that I cannot yet be tried under the American system by a jury even though I was indicted nearly seven months ago.

Respectfully,
BOB BRANNEN, Senator
28th District

On motion by Senator Karl, the foregoing report was received and filed and made a part of the records of the Senate.

Senator Karl moved that Senator Brannen be expelled from the Senate of Florida. The President referred the motion to the Committee on Rules, Calendar, Privileged Business and Ethics pursuant to Rule 1.39.

Senator Daniel moved that the rules be waived and the motion to expel Senator Brannen be withdrawn from the Committee on Rules, Calendar, Privileged Business and Ethics and referred to the full Senate for consideration at a time to be determined by the President. The motion failed.

Senator Karl moved that pending the report of the Committee on Rules, Calendar, Privileged Business and Ethics concerning the motion to expel Senator Brannen, that Senator Brannen's privileges of voting and speaking on any measures or matters before the Senate or its committees be suspended and during the period of suspension his salary and expense allowances be withheld.

Pending consideration of the foregoing motion, on motion by Senator Hollahan, the Senate recessed at 12:55 p.m. to reconvene at 2:30 p.m.

AFTERNOON SESSION

The Senate was called to order by the President at 2:30 p.m. A quorum present—46:

Mr. President	Deeb	Karl	Saunders
Arnold	de la Parte	Knopke	Saylor
Barron	Ducker	Lane	Scarborough
Barrow	Fincher	Lewis (33rd)	Stolzenburg
Beaufort	Graham	Lewis (43rd)	Trask
Bell	Gunter	McClain	Ware
Bishop	Haverfield	Myers	Weber
Boyd	Henderson	Ott	Weissenborn
Brantley	Hollahan	Plante	Williams
Broxson	Horne	Pope	Wilson
Childers	Johnson (29th)	Poston	
Daniel	Johnson (34th)	Reuter	

The Senate resumed consideration of the motion by Senator Karl relative to the suspension of Senator Brannen.

Senator Pope raised a point of order that Rule 1.39 provides for expulsion but does not provide for suspension.

The President stated in considering the point as to whether the Senate has the implied power to suspend Senator Brannen in this matter, he wanted to make it abundantly clear that his ruling was not and shall not be considered a general precedent in such matters and while there was a grave constitutional question involved, it was solely applicable to the instant proceedings and questions, and ruled in order that the matter could be resolved that the Senate had the authority, by two-thirds vote, to suspend and to hear arguments on both sides.

Senator Daniel was excused for medical reasons.

Senator Myers moved as a substitute motion that the question of suspension of Senator Brannen be referred to the Committee on Rules, Calendar, Privileged Business and Ethics pursuant to Rule 1.39. The substitute motion failed.

The question recurred on the motion by Senator Karl which failed by the following vote:

Yeas—19

Arnold	Gunter	Lewis (43rd)	Poston
Barron	Haverfield	McClain	Saylor
Beaufort	Hollahan	Myers	Scarborough
Brantley	Karl	Ott	Williams
Broxson	Knopke	Pope	

Nays—26

Mr. President	de la Parte	Johnson (34th)	Trask
Barrow	Ducker	Lane	Ware
Bell	Fincher	Lewis (33rd)	Weber
Bishop	Graham	Plante	Weissenborn
Boyd	Henderson	Reuter	Wilson
Childers	Horne	Saunders	
Deeb	Johnson (29th)	Stolzenburg	

Explanation of Vote

My concern for my constituents and my desire to be fair caused me at first to consider not voting on this matter because of the obvious impact on my people. However, careful examination of the appropriate constitutional law compels me to conclude as follows:

(1) That my district deserves my vote and that no conflict is presented by it.

(2) That unlike the situation where a Governor *may* suspend, during which time a successor is appointed to serve, no one has the power to give to my people the additional vote and service to which they are entitled while the ultimate question of guilt is determined.

(3) That a precious constitutional concept of due process compels me to withhold judgement on Senator Brannen's removal until I have heard some direct evidence and participated in a hearing as required by law.

(4) Having heard no evidence and participated in no hearing. I cannot deny my district a vote. This in no way is to take lightly the seriousness of the charges against Senator Brannen. Therefore, I must vote against the motion to suspend Senator Brannen.

Alan Trask, 27th District

Senator de la Parte announced that the Committee on Ways and Means would meet immediately upon adjournment this day in Room 331, Holland Building.

Senator Poston announced that the Committee on Transportation would meet at 9:00 a.m., Thursday, December 2.

On motion by Senator Hollahan, the Senate adjourned at 5:25 p.m. to reconvene at 9:00 a.m., December 1, 1971.