Opinion No. 15-1470

March 17, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Antonio Lucero, Secretary of State, Santa Fe, New Mexico.

As to appropriation of money by the legislature by joint resolution.

OPINION

*{*55}* I have before me your letter of the 15th instant, which I have not sooner answered because it required some examination of authorities, and I have been very closely occupied for the last two days.

You ask my opinion as to whether the legislature can appropriate money by a joint resolution. If a joint resolution, passed by both houses of the legislature, which has the effect of appropriating money, is approved by the Governor, I believe that it is as valid an enactment as though it were in form a bill. The only constitutional provision which should be considered in this connection is the first clause of Section 15 of Article IV of the Constitution, which declares that "No law shall be passed except by bill." I believe that this can be considered merely as directory, as long as the legislative intent is clearly expressed. I believe that no adjudicated case can be found precisely and exactly in point, but there are a number of cases holding various constitutional requirements to be merely directory, which are somewhat instructive. For instance, it has been held in Maryland and Missouri that the constitutional declaration as to the style of laws is directory only. In the case of McPherson v. Leonard, in 29 Md. 388, it appears that the constitution provided that "The style of all laws of this state shall be -- Be it enacted by the General Assembly of Maryland," and that the law under consideration omitted the words "by the General Assembly of Maryland." The court held that the law was valid, as the omitted words were not of the essence or substance of a law, but directory only to the legislature.

In the same state, in the case of Prince George's County v. B. & O.R. Co., 113 Md. 179, the same point was again decided and in the same way.

The case of Cape Girardeau v. Riley, 52 Mo. 424, is to the same effect.

In the case of Swann v. Buck, in 40 Miss., at page 292, it is stated that by the fourth section of the third article of the constitution it was ordained that the style of laws should be "Be it enacted by the Legislature of the State of Mississippi." The matter under consideration was a joint resolution, its style being "Resolved by the Legislature of the State of Mississippi," and the court said that a literal adherence to the formula prescribed by the constitution would make the resolution wholly void, but the court held the resolution to be valid as a law, and among other things, said that the word

"resolved" is as potent to declare the legislative will as "enacted." It is true that the constitution of Mississippi provided for the submission of resolutions to the governor, but this does not *{*56}* impair the value of the case as authority. In its opinion the court calls attention to the fact that the constitution of Mississippi contained the same clause as the Federal constitution "that no money shall be drawn from the treasury but in consequence of appropriation made by law," and stated that the constant practice, both in Congress and the legislature, had been to make important appropriations of public moneys from the treasury by joint resolution, thus showing that a resolution is regarded as law, and is, in all respects, of equal force and effect.