

## Opinion No. 15-1517

May 5, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. C. N. Hilton, San Antonio, N. M.

**As to when Chap. 57, Laws of 1915, takes effect.**

### OPINION

{\*104} Referring again to the matter of your letters to me as to the effect of the proviso at the end of Senate Bill No. 9, "That this act shall take effect and be in full force from and after January 1, 1917," I am compelled to say that I have not been able to reach an entirely satisfactory conclusion on this subject.

{\*105} Section 23 of Article IV of the Constitution declares that general rule that "laws shall go into effect ninety days after the adjournment of the legislature enacting them, except general appropriation laws, which shall go into effect immediately upon their passage and approval." There is a further exception as to acts which may be made to take effect immediately if passed by a two-thirds vote of each house, and a necessity for their taking effect immediately be stated in a separate section. I am unable to see how the legislature can direct that a law like Senate Bill No. 9 shall take effect at any time beyond the ninety days. It has been suggested to me by a prominent member of the bar with whom I have consulted, that this act must be considered as going into effect ninety days after the adjournment of the legislature, but as not becoming operative until January 1, 1917. This is ingenious, but I am not fully convinced of its being sound.

he also suggested the possible view that the proviso is separable from the rest of the act and that, therefore, the law would become effective ninety days after the adjournment of the legislature. The argument against that is that it might well be that the legislature would never have passed the act at all without this proviso and that, therefore, if the proviso is unconstitutional, it vitiates the whole act.

My recommendation would be that as soon as the ninety days have expired, some bank qualified to receive deposits under the provisions of this act, should apply to a treasurer for deposits to which it would be entitled if the act is in force, and upon refusal, begin a proceeding by way of mandamus to compel the giving of the deposits asked for. In this way we could get an early judicial decision of these perplexing questions. I am not familiar with the provisions of this bill, but I assume that it must be a meritorious measure as I am informed that it was prepared with great care and urged upon the state legislature at more than one session and must have received careful consideration. If it is a good measure, the sooner it goes into effect the better.