

Opinion No. 15-1493

April 1, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. W. G. Sargent, State Auditor, Santa Fe, N. Mex.

As to legislative procedure in the passage of a bill relative to the office of traveling auditor.

OPINION

{*75} You have today shown me a copy of a letter addressed by you to Mr. Howell Earnest, informing him that you had appointed Mr. A. G. Whittier state traveling auditor under the authority given to you by the provisions of House Bill No. 294, recently passed by the legislature, and requesting Mr. Earnest to turn over to the said Whittier, all official documents and other data, equipment, etc., that he has belonging to said office of State Traveling Auditor; and you have also shown me Mr. Earnest's answer to your letter, from which I make the following quotation:

{*76} "In view of the fact that said House Bill No. 294 was returned to the legislature at its recent session by the Governor without his approval and passed by the upper branch of said legislature over the Governor's veto on the afternoon of Friday, March 12, 1915, and in view of the further fact that the Attorney General of the State has rendered a written opinion that said legislature should have taken final adjournment at noon on said 12th day of March, 1915, it is not clear whether said House Bill No. 294 is a law or not. Then again, said House Bill No. 294 that was attempted to be enacted into law abolished the office of Traveling Auditor as such and created the new office of State Traveling Auditor with the same duties, but without any provision concerning the disposition of the records and effects in the Traveling Auditor's office. For these reasons I do not feel warranted in complying with your request until these matters have been passed upon by a court of competent jurisdiction."

I have examined what appears to be a copy of the Senate journal now in the office of the Secretary of State, from which it appears that the Senate, on the fifty-ninth day of the session passed House Bill No. 294, the Governor's objections notwithstanding, and that the President of the Senate, the Lieutenant Governor of the state, declared the bill had passed. I am, therefore, at a loss to understand how Mr. Earnest can assert that this bill was passed by the upper branch of the legislature over the Governor's veto on the afternoon of Friday, March 12, 1915. No court will go behind the record of the legislature as to any such matter as this. To do so would be a gross interference by the judicial branch of the government with the legislative department. The authorities are uniform on this point. If the legislative record itself disclosed that a bill had not been properly passed in accordance with the requirements of the constitution, a court would properly hold that the bill had not become a law even though it had all the signatures of

the officers of the legislature and of the Governor, but when the record shows that a bill was regularly passed, that is conclusive. Evidence to contradict the legislative record is never admissible.

Mr. Earnest is in error also in his statement "that the Attorney General of the state has rendered a written opinion that said legislature should have taken final adjournment at noon on said 12th day of March, 1915." The opinion to which Mr. Earnest refers is one which was given to Modesto C. Ortiz, Chairman of a special committee of the House of Representatives, on March 11, 1915. In that opinion I said that as the law takes no note of fractions of days, the first day of the session was January 12, 1915, and that the second day began at midnight and continued until the next midnight, and that by this method of counting the sixtieth day would be Friday, March 12, which must be the day of final adjournment at noon. In that opinion I did not make any reference to the well established doctrine that the hour fixed for the adjournment of a legislature does not arrive until the legislature so declares, and that if the record of the legislature shows a session to have been held on the fifty-ninth day or on the sixtieth day, the courts will not look behind {*77} that record or take any evidence by which its correctness could be impeached. In the present case the record shows that this bill was passed by the Senate on the fifty-ninth legislative day.

The other objection set up by Mr. Earnest that there is no provision in House Bill No. 294 concerning the disposition of the records and effects in the Traveling Auditor's office, which it abolished, is without any foundation whatever. The Constitution of the State of New Mexico created an entirely new set of state officers but contained no provision whatever as to the records, files, documents and other data belonging to the various territorial offices, and it would have been quite as reasonable for Mr. Nathan Jaffa, who was Secretary under the territorial government, to have refused to turn over anything in his office to the newly elected Secretary, Mr. Antonio Lucero, because there was nothing in the Constitution as to the disposition of the records of his office. There is, however, a general statute of the Territory of New Mexico which can be held applicable, inasmuch as the Constitution provides that all territorial laws, not inconsistent with the Constitution, shall continue in force. Section 2557 of the Compiled Laws of 1897 requires public officers of the territory, who have received law books as such officers, to turn over the same to their successors, as also the records and all other documents relative to their respective archives. It would be a trivial argument to attempt to say that the State Traveling Auditor is not within the meaning of the statute, a successor of the former Traveling Auditor and Bank Examiner, as he is charged with the performance of all the duties of that former officer whose office is abolished.

If Mr. Earnest insists upon retaining the records of the former office which ought to be turned over to Mr. Whittier, I do not see that that will constitute any obstacle to Mr. Whittier taking charge of the office of State Traveling Auditor and proceeding with the discharge of the duties thereof, although it may cause some temporary annoyance and embarrassment.