

Opinion No. 15-1602

July 29, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. C. N. Hilton, San Antonio, New Mexico.

Chapter 57, Laws of 1915, goes into effect January 1, 1917.

OPINION

{*174} Upon further consideration of the proviso at the end of Senate Bill No. 9, which is printed as Chapter 57 of the Laws of 1915, concerning which I wrote you on May 5, 1915, saying that I had not at that time been able to reach an entirely satisfactory conclusion, I now feel that I should give expression to somewhat different views from those contained in that letter, which I have reached after further consideration and discussion with members of the bar.

That proviso was "That the act shall take effect and be in full force from and after January 1, 1917." The difficulty which I found as to this proviso was based upon Section 23 of Article IV of the Constitution which declares the general rule that "Laws shall go into effect ninety days after the adjournment of the Legislature enacting them." There are exceptions to this general rule stated in the Constitution but which are not important in this connection. I said in my former letter that I was unable to see how the legislature could direct that a law like this one should take effect at any time beyond the ninety days, but I could not see that the law would therefore become effective at the expiration of the ninety days, because it might well be argued that the legislature would never have passed the act at all without that proviso.

I am now of opinion that it is properly within the power of the legislature, under some circumstances, to provide that an act should {*175} not take effect until sometime after the expiration of the ninety days. For instance, under the Constitution, the compensation of officers cannot be changed during the term of office for which they have been elected or appointed. If any such change were contemplated by the legislature, the act could not be allowed to take effect until the expiration of the term of office of the officer affected by the legislation. If the legislature desired to make any change in the salaries of county officers, such change could be effective only after the expiration of the terms of office of those officials in office at the time the legislature might act.

As long as there is a possibility of such exercise of legislative power, the courts would probably not look into the validity of the reasons for the exercise of such power, as that would perhaps be an invasion of the separate independence of a co-ordinate branch of the government which ought not to be attempted. Certainly, however, no officer of the executive branch of the government should attempt to exercise any authority to declare the action of the legislature in violation of the Constitution, and until so declared by the

courts, the legislation must be considered as binding upon all officials and upon the public generally.

The validity of the proviso in question may be further sustained by a consideration of the purpose of the provision in the Constitution as to laws going into effect ninety days after the adjournment of the legislature. The object, undoubtedly, was to give an interval of time within which the laws might be made known to the public generally before anyone should be affected by them while still ignorant of their existence. It was undoubtedly estimated that three months would be long enough to have the laws of any session printed and published, and while it was not long enough this year, that was due to the unusual circumstances that the printing was confided to a publisher in Denver who delayed getting the laws printed, together with the new Codification, much beyond the time ordinarily necessary for such purpose. In other words, the constitutional provision is not to be considered as a limitation upon the power of the legislature which would prevent that body from providing necessary legislation to go into effect after the expiration of the ninety days, but as a limitation upon legislative power as to laws going into effect prior to the expiration of the ninety days.

I am moved in part to write this letter because I have just been informed that in some county in the state action has been taken on the theory that this law went into effect in June, and that it has been stated that this is in accordance with my opinion. The only opinion that I have ever given on the subject is in my letter to you of May 5, and in that letter I did not express any such view, but recommended the obtaining of a judicial decision.