

Opinion No. 21-2881

March 31, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Honorable Alexander Read, District Attorney, Santa Fe, New Mexico.

Operation District Attorney Salary Law.

OPINION

{*37} I have your letter of the 24th instant regarding the legality of Senate Bill No. 191, the act regulating the salaries of District Attorneys and providing for the contributions to be made to the salaries of such District Attorneys by the various counties, advising that the bill carries the emergency clause, but that it is claimed that the record vote in the Senate will not show the two-thirds majority necessary to carry the law into immediate effect.

{*38} The law, as filed in the office of the Secretary of State, signed by the officers of the Senate and the House and approved by the Governor, contains the emergency clause and appears on its face to be regular.

It has been twice held by the Supreme Court of this State that the journal of the legislature could not be resorted to in order to impeach a duly authenticated legislative act. In the case of

Kelly vs. Marron, 21 N.M. 239, 153 Pac. 262, the court held that it would not look beyond the properly authenticated legislative act on file in the office of the Secretary of State, certified and signed as required by the Constitution, to the journal of either house for the purpose of determining whether said act was read in full therein and that it had been enrolled and engrossed as required by Section 20, Article IV of the Constitution.

The doctrine in this case was reaffirmed in the case of

State ex rel. Clancy vs. Hall, 23 N.M. 422, 168 Pac. 705.

And in the case of

Smith et al. vs. Lucero, Secretary of State, 23 N.M. 411, 160 Pac. 709,

it was held in interpreting Sections 12 and 20 of Article IV and Section 1 of Article XI of the State Constitution, that where there was a conflict between the enrolled and engrossed resolution proposing a constitutional amendment and the legislative journal in that the journal tended to show that the resolution failed to receive the number of

votes required by the Constitution, the enrolled and engrossed resolution properly authenticated would prevail over the journal.

In view of the foregoing holdings of our Supreme Court, we are satisfied that the enrolled and engrossed bill as authenticated and which carries the emergency clause, would prevail over any entry in the journal indicating that the bill had not passed with the emergency clause and, therefore, in our opinion, Senate Bill No. 191 is now in full force and effect.