Opinion No. 31-99

March 25, 1931

BY: Frank H. Patton, Asst. Attorney General

TO: Mr. Adolph P. Hill, Asst. State Comptroller, Santa Fe, New Mexico.

*{*53}* Your letter of March 25, contains a request for an opinion from this office as to whether or not Committee Substitute Bill for House Bill No. 17 entitled "An Act to provide for refund of excise taxes paid on gasoline or motor fuel purchased *{*54}* and used by a consumer, other than by motor vehicles operated or intended to be operated on any of the public streets or highways of the State of New Mexico, etc.," is effective and in force at once, or whether it becomes effective ninety days after its passage and approval.

It is our understanding that this law carried the emergency clause, but that it did not pass the Senate by a two-thirds majority as required by the Constitution; that through some error the bill went to the House of Representatives with the emergency clause where it was passed by the necessary two-thirds vote, was thereafter enrolled and engrossed and signed by the officers of the respective houses of the Legislature and signed and approved by the Governor on the 11th day of March, 1931.

We have given this question serious consideration and after much deliberation have concluded that the case of Kelly vs. Marron which is cited in 21 N.M. 239 is controlling.

This case reviews numerous decisions upon similar questions and holds in brief that the enrolled and engrossed bill is conclusive upon the courts as to the regularity of its enactment.

This case follows the rule in many jurisdictions that the enrolled and engrossed bill duly signed by the presiding officers of the two branches of the Legislature and approved by the Governor and filed with the Secretary of State in conclusive and cannot be shown to be invalid by any reference to the journals.

In the case of Earnest vs. Sargent, 150 Pac. 1018 the Court did resort to the legislative journal for the purpose of ascertaining whether a purported legislative act had received the concurrence of two-thirds of the members and voting in each house.

The bill referred to in that case was passed over the veto of the Governor of the State and the Court was of the opinion that inasmuch as neither the constitution nor any statutory provision required any certification of a bill thus passed over the veto of the Governor, that the court was therefore compelled to resort to the journal to secure proof of the due passage of the act.

It is apparent that that case is radically different from the one at hand and we are forced to follow the ruling laid down in Kelly vs. Marron, supra.

It is, therefore, the opinion of this office that the enrolled and engrossed bill now on file with the Secretary of State and duly signed by the Governor is in fact an emergency measure, effective at once, and that we have no right, authority or power to resort to the legislative journal.