OPINION
65-288

April 12, 1965 (OPINION)

The Honorable R. Fay Brown,

State Representative

RE: Schools - Transportation - Amount of State Aid

This is in reply to your letter of April 7, 1965, in which you set forth questions relative to Senate Bill No. 80. You note the following facts:

> To review, briefly, legislative action on this bill: Introduced to provide for 16 cents per mile, referred to Committee on Education, Page 61, Senate Journal, reported back amended to 14 cents per mile, Page 175. Engrossed, Page 189, Second reading and final passage, Page 192. Sent to House, Page 210. House action, introduced January 30, 1965, House Journal Page 315 and referred to Committee on Education.
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> On Page 977 House Journal, Committee on Education recommended the same be amended as follows:
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> 'In line 9 of the engrossed bill delete 'fourteen' and insert 'thirteen' in lieu thereof. An when so amended recommends the same do pass and be referred to the Committee on Appropriations.'
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> House Journal, Page 1011, Rep. Bloom moved that the amendments to Senate Bill 80 as recommended by the Committee on Education Page 977 of the House Journal, be adopted, which motion prevailed.
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> House Journal, Page 1189, Rep. Solberg, Chairman of the Committee on Appropriations recommends that SB 80 do pass.
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> House Journal, Page 1209, SB 80 was read and on the question of final passage (a discrepancy in House action occurs as it states as amended, on Page 175 of the Senate Journal).
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> It appears, because of the House action up to this point, the Bill was amended to 13 cents per mile, as the foregoing record shows - but it appears the Enrolling and Engrossing clerks and committee did not properly follow the recorded action of the both committees, * * *.
>
> Mr. Attorney General, I respectfully request a formal opinion, from you, as to the legal status of Senate Bill 80, at your earliest convenience."

Senate Bill No. 80, as enrolled and signed by the Governor, amends and reenacts Section 15-34-24 of the 1963 Supplement to the North

Dakota Century Code, by increasing the payments from 12 cents per mile to 14 cents per mile to each school district providing school bus transportation in contract school buses or in district owned and operated school buses having a capacity of twenty or more pupils.

The action of the House of Representatives on final passage of Senate Bill No. 80, as shown on Page 1210 of the House Journal, is as follows: "The question being on the final passage of the bill, as amended, on Page 175 of the Senate Journal, the roll was called and there were: ayes, 96; nays, 5; absent and not voting 8." As you have noted in your letter, an amendment was adopted by the House. This amendment would have reduced the per mile payment for the specified school buses from 14 cents per mile as approved by the Senate to 13 cents per mile. As noted, the Amendment was adopted by the House. However, the final passage of the Bill, as illustrated on Page 1210 of the House Journal, was only on the Bill as amended by the Senate, i.e. a 14 cents per mile payment. It is also to be noted that Senate Bill No. 80 was messaged back to the Senate as having passed the House unchanged. See Page 851 of the Senate Journal.

The adoption of the Amendment by the House was on voice vote. The final passage of the Bill was a recorded roll call vote.

The Journals of the House and Senate are the official records of the action taken by each of those legislative bodies. These records show that Senate Bill No. 80, as passed by each such body, was identical. Both the Senate and the House, on recorded roll call vote, approved Senate Bill No. 80 providing for a per mile payment of 14 cents for school buses. Senate Bill No. 80, providing for 14 cents per mile payments, was signed by the President of the Senate, the Secretary of the Senate, the Speaker of the House and the Chief Clerk of the House, as being the bill which was duly enacted by the Senate and the House. The only question would appear to be whether the House could have voted on Senate Bill No. 80 as amended by the Senate without considering the amendment which the House had previously adopted by voice vote.

With respect to the question presented, we note the following provisions of the North Dakota Constitution:

> Section 48 provides in part: "Each house shall have the power to determine the rules of proceedings * * *."
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> Section 49: "Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present."
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> Section 57: "Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other."
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> Section 58: "No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose."

> Section 63: "Every bill shall be read two separate times, but the first and second readings may not be upon the same day, and the first reading may be by title of the bill only, unless upon such first reading, a reading a length is demanded. The second reading shall be at length. No legislative day shall be shorter than the natural day."
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> Section 65: "No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal."
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> Section 66: "The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal."

Section 48 of the North Dakota Constitution provides that each house shall have the power to determine the rules of proceedings. Therefore, whether or not Senate Bill No. 80 should have properly been voted upon by the House without consideration of the amendment thereto previously adopted by the House is a matter of internal proceedings of the House over which this office has no authority to issue any rulings. We can only look to the journal entries and the Constitution to determine whether the constitutional requirements have been met. In so doing, we find the necessary requirements have been complied with for the reasons stated hereafter.

Senate Bill No. 80, in the form approved by the Governor, was adopted by both Houses upon a majority of all the members in each House and the names of those voting were entered on the journal of each House.

Since the entries on Pages 1209 and 1210 of the House Journal show that on final passage of Senate Bill No. 80, the Bill, as amended on page 175 of the Senate Journal, had been read, we must assume, in accordance with Section 63 of the North Dakota Constitution, that the bill was read in its entirety including the provision relative to 14 cents rather than 13 cents per mile payments. Had the members of the House intended the Bill to be voted upon contain the 13 cents provision rather than the 14 cents provision, objection to such procedure would have been voiced at that time. The silence on the part of the members of the House, as indicated by the Journal entries, would appear to be acquiescence to the final consideration of Senate Bill No. 80 as amended by the Senate and without reference to the previously adopted House amendment.

The Supreme Court of North Dakota in State v. Schultz, 44 N.D. 269, 174 N.W. 81 (1919), held that, while every reasonable presumption is in favor of an enrolled bill, such presumption is not conclusive; and, where the legislative journals clearly show that a statute was in fact never passed, the court will adjudge it to be void. In that case the bill as passed by the Senate was not the same bill as was subsequently enacted by the House, as clearly indicated by the journals of the respective legislative bodies. In the present instance, had the Journal of the House illustrated that Senate Bill

No. 80, as finally enacted by the House, provided for a 13 cents per mile payment, and no further action was taken by the Senate, we could only conclude that no bill was in fact enacted, since the two houses would have voted on separate measures. As indicated above, however, such was not the case.

In Woolfolk v. Albrecht, 22 N.D. 36, 133 N.W. 319 (1911), the court was faced with a situation wherein a bill was enacted by the Senate, sent to the House where it was amended, and as thus amended was duly passed. It was messaged back to the Senate as having been passed without change. The court in this instance held that the "chief clerk of the House whose duty it was to make the journal entries, made two wholly irreconcilable entries, to wit: One that the bill was amended and passed the House as amended; and the other, in effect, that the bill had passed the House without change. In the light of this conflict, the journals, even if otherwise competent to impeach the enrolled bill, were without probative force, and a resort to the latter was imperative. Where entries in a journal are ambiguous and conflicting so that it is impossible to ascertain therefrom whether the bill was duly enacted, it will be assumed that the proper constitutional action was taken thereon."

It is to be noted that the Woolfolk case was decided prior to the Schultz case, supra, and insofar as journal entries are not irreconcilable, the holding in the Schultz case, to the effect that where the legislative journals clearly show that a bill was in fact never passed and the court will adjudge it to be void despite the enrolled bill, would prevail. However, where the journals are not clear, the court has held that the enrolled bill will prevail under the decision in the Woolfolk case.

While there is a conflict in the House Journals, as indicated in your letter, the conflict does not raise as serious a question as did the conflict which existed in the Woolfolk case since, in that case, the journal entry on final passage indicated the bill passed the House as amended in the House while the other journal entry, the message to the Senate, indicated the bill had passed the House without amendment. In the instant case, the entries in the House Journal indicate the bill was passed as amended by the Senate, without any reference to the House amendment, and further show, by the message to the Senate, that such bill was passed by the House unchanged, i.e., without amendment. Both of these entries are clear. They indicate the bill passed by the House was the same as that passed by the Senate. The enrolled bill is in complete accord with these journal entries. Any previous action which might have been taken by the House with respect to the amendment of Senate Bill No. 80 was superseded by House passage of Senate Bill No. 80 as amended by the Senate and without reference to the House amendment.

The only conflict in the instant case is between those House Journal entries indicating the adoption of the amendment by the House and the final passage of the bill by the House without such amendment. There is no conflict between the House and Senate Journals and the enrolled bill insofar as what bill was finally passed is concerned. Therefore, even without reliance upon the Woolfolk case, it is clear that Senate Bill No. 80, as finally enrolled and approved by the Governor, is the bill which was duly passed by both houses of the

Legislative Assembly. Reference to the Woolfolk case only strengthens this result.

In view of the foregoing, it is our opinion that Senate Bill No. 80, as enrolled and signed by the Governor, is a bill duly passed by both houses of the Thirty-Ninth Legislative assembly and approved by the Governor and, unless referred as provided by law or amended in a special session of the Legislative Assembly prior to July 1, 1965, Senate Bill No. 80 will become law on July 1, 1965.

HELGI JOHANNESON

Attorney General