

OPINION  
68-123

April 26, 1968 (OPINION)

Honorable Ben Meier

Secretary of State

RE: Legislature - Resolutions - Errors and Omissions

This is in response to your letter in which you make reference to Senate Concurrent Resolution UU relating to proposed constitutional amendment on the judiciary, which is now chapter 517 of the 1967 Session Laws. You call to our attention that section 7 of the resolution does not contain the same language as was adopted and passed by the legislature. You then ask for an opinion as to whether or not you should use the language of Senate Concurrent Resolution UU as filed in your office, or if you should insert the words or language which was adopted by legislation but omitted in the enrolled resolution.

Senate Concurrent Resolution UU was amended several times during its passage. All of the amendments are fully accounted for, except for the amendments found on Page 878 of the Senate Journal which deletes lines 150 through 159 of the engrossed bill, and substituting in lieu thereof the language found on Page 878. The language inserted in lieu thereof was incorporated but apparently in recopying the bill the language which appeared on line 160 through line 165 became muddled. The language which should appear immediately after the amendment set out on Page 878 of the Senate Journal is that which appears on line 160 through 166 in the engrossed bill, which is as follows:

"of the justice or judge. Upon an order for retirement, the justice or judge shall thereby be promptly retired with the same rights and privileges as if he retired pursuant to law. Upon an order for removal, the justice or judge shall thereby be promptly removed from office and his salary shall cease from the date of such order. Retirement age, rights, privileges and benefits shall be as prescribed by law."

(Underscoring theirs.)

The language of section 7 in question as it appears on Page 1233 of the 1967 Session Laws is as follows:

"The supreme and district court judges or the judicial council, whichever the case may be, may, after such investigations as they or it deems necessary, order a hearing to be held before them or it concerning the censure, retirement, or removal, of such justice or judge, or they or it may in their or its discretion request the supreme court to appoint three special masters, who shall be judges of courts of record, to hear and take evidence in any such matter and to report thereon to them or it. If, after hearing or after considering the record and report of the masters, they or it find good cause therefore, they or it shall order censure, retirement, or removal as the

case may be, of the justice or judge. Upon an order for retirement, the justice or judge shall thereby be promptly removed from office and his salary shall cease from the date of such order. Retirement age, rights, privileges and benefits shall be as prescribed by law."

In comparing this language with the language found in section 7 of House Concurrent Resolution UU as it appears on Page 1233 of the 1967 Session Laws, which apparently is the same as the language found in the resolution filed in your office, we find a discrepancy. In comparing same with the original engrossed bill to which the amendments were made, as set out on Page 878, it is found that the following language: "retired with the same rights and privileges as if he retired pursuant to law. Upon an order for removal, the justice or judge shall thereby be promptly" is missing and should be inserted between the word "promptly" and the word "removal" in the second to the last sentence as it appears in the 1967 Session Laws (Page 1233). By inserting such language it would conform to the amendments adopted by the legislature. The pertinent provisions of section 7 would then be as follows:

"The supreme and district court judges or the judicial council, whichever the case may be, may, after

- \* such investigations as they or it deems necessary, order
- \* a hearing to be held before them or it concerning the
- \* censure, retirement, or removal, of such justice or judge
- \* or they or it may in their or its discretion request the
- \* supreme court to appoint three special masters, who shall
- \* be judges of courts of record, to hear and take evidence
- \* in any such matter and to report thereon to them or it.
- \* If, after hearing or after considering the record and re-
- \* port of the masters, they or it find good cause therefore
- \* they or it shall order censure, retirement, or removal as
- \* the case may be, of the justice or judge. Upon an order
- \* for retirement, the justice or judge shall thereby be pro
- \* retired with the same rights and privileges as if he reti
- \* pursuant to law. Upon an order for removal, the justice
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- his salary shall cease from the date of such order. Reti
- age, rights, privileges and benefits shall be as prescrib

(Language which was inadvertently omitted but now inserted  
underscored.)

It appears quite obvious that the discrepancy is the result of a clerical error. It is easily understood how the error could come about - there are two successive sentences which begin with the words "upon an order." It appears that in copying the bill the individual inadvertently skipped some language.

We have consistently held that where a discrepancy appears between the language adopted by the legislature and the language as it appears in the enrolled or engrossed bill, the language as passed by the legislature prevails. Laws are not the results of the clerical efforts but are the results of the deliberations of the legislature. In this instance the Senate Journal clearly establishes the language which was approved and adopted by the legislature, but through inadvertence was not incorporated in the enrolled and engrossed bill. The discrepancy must be resolved in favor of the actual language adopted by the legislature, particularly so when there is no indication that the legislature would have reached a different result.

It is, therefore, our opinion that the certification made by your office pursuant to the provisions of section 16-01-07 must recite the actual language adopted by the legislature and not the erroneous language as found in the final enrolled and engrossed bill which was filed in your office. The paragraph identified with asterisks (\*) contains the language adopted and passed by the legislature.

HELGI JOHANNESON

Attorney General