OPINION
51-101

March 27, 1951 (OPINION)

LEGISLATION

RE: Journal Rule

You have asked the Attorney General for an opinion relating to House Bill 538.

We find that on page 1026 of the House Journal, line 40 of said bill was amended as follows: "In line 40 after the word 'thousand' insert the words 'two hundred.'" Upon roll call the bill, as amended, was passed, there being 94 ayes, 3 nays, 16 absent and not voting.

On page 749 of the Senate Journal we find that House Bill 538 was voted upon as amended, the figure "two hundred" being inserted after the word "thousand" and upon roll call the bill passed, there being 42 ayes, no nays and 7 absent and not voting.

You now call our attention to the fact that House Bill 538 when enrolled and signed by the Governor omitted the $200 provided for in the amendment referred to. Your question to this office is, does the bill as enrolled govern or is the form in which the bill passed both houses controlling.

We call your attention to section 1-0206, N.D.R.C. 1943 which reads as follows:

> CLERICAL AND TYPOGRAPHICAL ERRORS. Clerical and typographical errors shall be disregarded when the meaning of the legislative assembly is clear."

In the Report of the Attorney General of North Dakota to the Governor of opinions covering 1940-42 on page 75 is an opinion that was written by Judge Sathre. In that particular case there were certain words erroneously added to the bill in the processing thereof after it had passed both houses of the legislature. The opinion of Judge Sathre reads in part as follows:

> Since the two words 'State' in the sixth line of the Bill to which I have referred, were not in the Bill when it was finally passed by both Houses, such word should be disregarded and the Bill read and interpreted as though said word were not included therein.
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> In other words, the Bill must be held to be a law in the form in which it was passed by both Houses and signed by the Governor, and the words inserted through error by the clerical force or those inserted by the Secretary of State in the preparation of the Session Laws, certainly, could not have the effect to change the meaning of the Bill. If it had such an effect, it would render the Bill void and of no effect."

The courts of the various states are not in harmony on this proposition. Certain states adopt what is known as the enrollment rule to the effect that the courts cannot go back of the enrolled bill. South Dakota has adopted this rule in the case of Graber v. Schmidt, 173 N.W. 838 and in the case of Narragang v. Brown County, 85 N.W. 602. In the Narragang case the court said, "The journals of the two houses of the legislature are not competent to impeach the validity of a statute enrolled and authenticated by the proper officers." In the Graber case the court held, "Act of Legislature, as enrolled and certified to by the respective officers and approved by the Governor, is conclusive on the courts, and it is not competent for the court to consider any matter found in the journals tending to impeach the validity of the act, notwithstanding Laws 1909, chapter 167, providing that the 'journal shall constitute the record of the legislative proceedings'."

In this connection it is to be noted section 1-0206 referred to above was new matter in the 1943 Code and that South Dakota had no such law when the decisions of that state referred to herein were handed down.

The Supreme Court of Arkansas adheres to the so-called journal rule. There the court held "The governor in signing an enrolled bill approves the bill as passed by the legislature, the enrolled bill being merely a reproduction thereof, and the act not being impaired by additions, omissions, or misprisions of the enrolling clerk in copying the bill." 221 S.W. 179. This same rule is followed in other states.

The writer is of the opinion that the journal is the better rule and that the other rule will in many cases tend to defeat justice. We believe that the reasoning laid down in the opinion of the Attorney General referred to can be extended so as to cover the present act and that the law should be given effect as it was passed by both houses of the legislature.

It is the opinion of this office that the county auditor in the county affected should issue warrants to the county judges for the amount of salary provided for in the amendment to House Bill 538 as shown in the Senate and House Journals.

ELMO T. CHRISTIANSON

Attorney General