OPINION
51-154

July 2, 1951 (OPINION)

SOIL CONSERVATION

RE: Election

In your letter of June 21 reference is made to House Bill 649 passed by the 1952 Legislative Assembly and amending section 4-2203, 4-2222 and 4-2221 of the North Dakota Revised Code of 1943, relating to Soil Conservation Districts and providing for the election of District Supervisors.

You state section 4-2221, General Election of Districts, as passed by the House provided that, "The judges and election officers at such district general election shall be appointed by the officers of the Soil Conservation District." You state that the Senate amended this to read, "* * * officers conducting the state general election", and passed the measure on roll call. Thereupon a conference committee was appointed and on the twenty-sixth of February, the conference committee recommended that the Senate recede on the amendments the Senate had made on H. B. 649 which the House objected to by striking out the words, "the officers of the Soil Conservation District" and to insert in lieu thereof "officers conducting the state general elections". The bill was passed on roll call. See Senate Journal February 20, 1951, page 539, and Senate Journal page 603.

When the enrolled and engrossed copy of the bill was received by the Governor, it was discovered that the final action taken on the measure by the House and Senate was not incorporated in the bill. Therefore, the enrolled bill as presented to the Governor for approval provides that the judges and officers of the District elections shall be the same officers who conduct the state general election. You state that this will make the law unworkable for the reason that all citizens are permitted to vote at any general election, but that under the State Soil Districts Law only "land occupiers" may vote.

You ask whether or not the intent of the members of the House and Senate as expressed by their action in passing House Bill 649 or will the enrolled and engrossed bill have preference.

The question is one which, at first impression, presents a condition which cannot be overcome. Nevertheless the issue has been decided and we believe that the circumstances surrounding House Bill 649 comes within the purview of the rule which this state has adopted in previous decisions.

We call your attention to section 1-0206 of the North Dakota Revised Code of 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. Judge Sathre stated, "*-*-* the Bill must be hold to be a law in the form in which it was passed by both Houses 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 problem at hand is analogous to that just stated and the opinion is in point for the reason that it is immaterial during what administrative course the error is committed.

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. In Graber vs. Schmidt, 173 N. W. 838, and Narrangang vs. Brown County, 85 N. W. 602, the South Dakota Courts held that 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, "An 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 the 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 that 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. The court held there that "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. The same rule is followed in other states.

We are of the opinion that the journal rule is the better rule and that the other rule will in many cases tend to defeat justice.

We believe, therefore, 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. The corrections made in the Legislature must, therefore, have the effect of force and law.

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