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Subject State Prosecution Legislature/1974

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STATE OF KANSAS

Office of the Attorney General

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May 21, 1974

Opinion No. 74- 157

Honorable Elwill M. Shanahan
Secretary of State
2nd Floor -- The Statehouse
Topeka, Kansas 66612

Dear Secretary Shanahan:

Article 2, § 20 of the Kansas Constitution states thus:

> "The enacting clause of all laws shall be 'Be it enacted by the legislature of the state of Kansas;' and no law shall be enacted except by bill."

You advise that 1974 House Substitute for Senate Bill 656 does not bear an enacting clause as prescribed by the state constitution, but recites, in lieu thereof,

> "Be it resolved by the Legislature of the State of Kansas:"

You inquire "[w]hat effect, if any, do the words 'Be it resolved' have on the validity of the House Substitute for Senate Bill No. 656 in light of Article 2, Section 20" as quoted above.

An analogous question was raised in State ex rel. Brewster v. Knapp, 102 Kan. 701 (1918), a case which arose as a result of the refusal of the state auditor to approve payment of a claim of $1,500 on the ground that the Legislature had authorized the expenditure by a House concurrent resolution, rather than by bill, relying upon Article 2, §§ 24 and 20, which provide that "no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law" and that "no law shall be enacted except by bill."

The court did not decide the general proposition whether "legislation may ordinarily be accomplished by means of the adoption

of a proposition submitted in the form of a resolution . . ." Rather, in the case before it, the court chose not to require strict adherence to the unambiguous constitutional command, but undertook the heavy burden of resting its determination of constitutionality upon a judicial determination whether the constitution had been substantially followed. Thus, as to the specific measure before it, the court concluded

> "that the process used in the case now under consideration amounted to the enactment of a law by bill. While the instrument acted upon by the two houses and the governor described itself as a concurrent resolution, it had every characteristic, in form and treatment, of such a bill as by the combined action of the legislature and the governor becomes a law. It had a title which clearly expressed its subject to be the appropriation of money . . . . It was read on three separate days in each house. It contained a provision declaring that 'this act' should take effect upon its publication. In each house it received the votes of a majority of the members elected, and the result of the roll call was entered in full on the journal. It was submitted to and approved by the governor . . . . The treatment given this measure seems to show that it was regarded by the legislature and the governor as a 'bill.' It ought to be given effect as such, unless some insuperable obstacle is interposed. The fact that it is styled a concurrent resolution, rather than a joint resolution or bill, is not in itself especially important. It should be classified by its essential qualities rather than by what it happens to have been called. All that it lacks of the necessary characteristics of a bill is a literal compliance with the requirement that 'The enacting clause of all laws shall be "Be it enacted by the legislature of the state of Kansas."' . . . . In lieu of this, however, it has one reading 'Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein.' . . . The turning point in the present controversy is whether the words: 'Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein,' convey essentially the same meaning as 'Be it enacted by the legislature of the state of Kansas.'
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> We think that the clause, 'Be it resolved by the house of representatives of the state of Kansas, the senate concurring therein,' unequivocally indicates that the

> two houses comprising the Kansas legislature unite in giving their approval to the sections which follow it, with the purpose to give them the effect which they purport to have, and that this is all that could have been accomplished by a literal adherence to the formula employed by the constitution." 102 Kan. at 705 - 707.

We have been furnished with copies of the cover sheets and the first page of Senate Bill 656 as originally introduced in the Senate, the Senate substitute for that bill, and the House substitutes therefor. These documents disclose that as introduced in the Senate, the enacting clause was as required by Article 2, § 20. When the House substitute therefor was introduced, it bore the defective enacting clause concerning which you inquire.

Despite this defect, however, we must conclude that under the holding of State ex rel. Brewster v. Knapp, supra, this departure from constitutionally prescribed practice does not invalidate the bill. The reasons set forth above as quoted from that opinion are directly analogous to the question presented here, and that decision is controlling.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:jsm