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STATE OF KANSAS

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May 29, 1974

Opinion No. 74- 161

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

. Dear Secretary Shanahan:

Additional questions have been raised concerning the validity of House Substitute for Senate Bill 656, enacted by the 1974 Legislature. Specifically, the question is raised whether the bill is valid, despite the fact that it was not read three times before the Senate, as required by Article 2, § 15 of the Kansas Constitution, which states in pertinent part thus:

"Every bill shall be read on three separate days in each house, unless in case of emergency."

Few bills have surely had such a torturous history as this one. It originated as Senate Bill 656, introduced by Senator Booth, by request of the Special Committee on Elections. After its second reading, it was referred to the Committee on Elections, which recommended that the Senate Substitute for Senate Bill 656 be passed, this action being taken on February 5, 1974. This substitute bill was read in the Senate the third time on February 8, 1974, and passed as amended. It was read in the House of Representatives on February 8, 1974, the second time on February 9, and then referred to the Committee on Elections, which on February 15, recommended a substitute bill. House Substitute for Senate Bill 656 was read for the first time in the House on February 15, read on February 19 and 21 for the second and third times, and on the day of the third reading, passed as amended. On that day, it was read for the first time in the Senate.

Senate Rule 84 states thus:

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"Whenever the House adopts amendments to a Senate Bill which materially changes its subject, upon return of such bill to the Senate, it shall be read a first and second time and be referred as provided in Rule 31."

On February 21, after House Substitute for Senate Bill 656 was read for the first time before the Senate, the president of that body determined that the substitute bill did not materially change the subject matter contained in the original Senate Bill 656, and therefore, was not required to be read a first and second time in the Senate. Accordingly, it was not read three times before the Senate. The question is presented whether the bill is invalid for this failure.

The applicable general principles are stated thus at 1 Sutherland, Statutory Construction, § 10.04 (4th ed.):

"In recognition that reading requirements are supposed to facilitate informed and meaningful deliberation on legislative proposals and that refinement and modification of the text of a proposal is the natural and desirable product of deliberation, it is generally agreed that germane amendments to the text of a bill which are made at the stage of second or third reading are valid even though the amended version is not thereafter read three times on three days. On the other hand, if new provisions which are not germane to the text of the original bill are substituted for it after one or more readings, the new version of the bill cannot be validly enacted without the requisite readings following the substitution."
[p. 283]

A question precisely analogous to that raised here was considered in Edwards v. Nash County Board of Comm'rs., 110 S.E. 600 (N.C. 1922). The bill in question was introduced in the House of Representatives, and referred to the appropriate committee, which reported it unfavorably, and recommended adoption of a substitute. The bill thus substituted was placed on the calendar, and read twice. It was then sent to the Senate, and passed in conformity there with constitutional requirements, and enacted into law. The court stated the issue and its view thus:

"It may now be observed that the plaintiff's specific dominant objection is that when H.B. 92 was tabled the substitute became an entirely new bill, that the adoption of the substitute was its first reading, and that the first and second reading of the new bill occurred on the

same day. We need not travel abroad in search of precedent to show that this position cannot be sustained. In Brown v. Com'rs, 173 N.C. 599, 92 S.E. 502, it appears that the bill which was there under discussion passed the first reading in the House of Representatives, and was referred to a committee who reported a substitute for the original measure. Brown, Jr., said:

"The substitute was only an amendment to the original bill, which had already passed first reading on January 22. Consequently, when the substitute passed second and third readings on different days and the ayes and noes were duly entered on both said readings the requirements of . . . the Constitution were duly complied with."

The court further cited 25 Ruling Case Law 880, § 127, thus:

"Even a substitute bill which is so germane to the original bill as to be a proper substitute need not be read three times."

In United States Gypsum Co. v. State Dept. of Revenue, 363 Mich. 548, 110 N.W.2d 698 (1961), the court was presented with a similar issue, wherein the substitute bill was never read in the House of Representatives. The court concluded that "the substitute served the same purpose as that proposed by the original bill, was germane to it, and hence should not be regarded as a new bill," quoting with approval from the opinion of the trial court:

"The legislature has the right to amend any bill by enlarging or diminishing, being bound only to the territory included in the bill [Citations omitted.] In this latter case it was held that it was immaterial whether the method pursued by the legislature was by amendment or by substitute for the original bill so long as the substitute was for the same purpose as the original bill and not for another and different purpose; in other words, is the substitute bill in harmony with the objects and purposes of the original bill and germane thereto"

Similarly, in State ex rel. Attorney General v. Buckley, 54 Ala. 599 (1875), discussed at 158 A.L.R. 429, the court stated thus:

"When a bill is referred to a committee, it is within the discretion and power of such committee to report it back with or without amendment. The amendments

reported may be so numerous as to require or suggest that the committee report an amendatory or substitutional bill. If in so doing, they do not so far depart from the bill referred as to offend against the provisions of . . . the Constitution, such reported bill will take the place of the one referred, and will not be remitted to the status of a new bill, introduced for the first time."

Similarly, in State ex rel. Dawson v. Akers, 92 Kan. 169 (1914), this question was raised:

"The original bill was known as house bill No. 219. It was read three times in each branch of the legislature and on three separate days. The main objection to the manner of its passage is, that in the senate the judiciary committee simply reported a substitute for house bill No. 219. It appears, however, that the substitute was germane to the title and that exactly the same result could have been accomplished by returning the original bill and recommending its passage with the amendments. The precise question was before the supreme court of Tennessee in a recent case. (Railroad v. Memphis, 126 Tenn. 267, 148 S.W. 662, 41 L.R.A., n.s., 828.) The language of the court in disposing of the contention is so pertinent that we adopt and approve it. In the opinion it was said:

'It is said the committee on municipal affairs simply reported a substitute for House Bill No. 175. The distinction sought to be made between reporting a substitute bill and an amendment by substitution is more fanciful than real. As stated, the title of the bill remained the same, and the substitute offered for the original is germane to the title, and is otherwise unobjectionable. The bill cannot be destroyed upon a mere matter of terminology. If it were competent, as is conceded, for the original bill to have been amended by substitution, so as to ingraft upon it the same matter that was contained in the substitute bill, we can see no substantial reason why it is not just as permissible to offer the same subject-matter under the original title as a substitute for the original bill.'" 92 Kan. at 209-210.

The courts have tended to adopt a very latitudinarian test of what is germane. As stated in United States Gypsum Co., supra,

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"The test is whether or not the change (by either method [amendment or substitution]) represented an amendment or extension of the basic purpose of the original, or the introduction of entirely new and different subject matter. 1 Sutherland, Statutory Construction, § 805."

Despite the various and numerous detailed amendments to Senate Bill 656, which were incorporated in the House Substitute therefor, it cannot be said that the latter measure is not "germane" to the subject matter of the earlier.

Accordingly, we cannot conclude that House Substitute for Senate Bill 656 is invalid for failure to have been read three times in the Senate.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm