

Opinion No. 69-21

March 18, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Justin Reid, Assistant Attorney General

TO: Honorable W. B. O'Donnell, State Representative, Legislative Executive Building, Santa Fe, New Mexico

QUESTIONS

FACTS

Senate Judiciary Committee Substitute for Senate Bill 123 and House Bill 87 relating to wrongful use of Public Property according to information you have furnished passed both houses of the current legislature and was sent to the Governor on March 11, 1969. The bill was vetoed by the Governor but was not returned to the Senate until March 15, 1969.

QUESTION

1. Was the attempted veto by the Governor constitutionally effective?
2. Has the bill become a valid law?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

{*31} ANALYSIS

The Governor's attempted veto was invalidated by failure to return the bill to its house of origin within three days as required by Article IV, Section 22 of the New Mexico Constitution. See Opinion of the Attorney General, 1969, No. 69-20, issued this date.

But for the opinions expressed below, we believe the bill would be a valid law.

On March 11, 1969, at the request of the Governor's Office, this office issued an advisory memorandum concerning the above legislation. It reads as follows:

"In reply to your memo of March 10, 1969, it is our opinion that the proposed bill is probably unconstitutional in several respects as to a number of its provisions.

(1) There are possible problems with the title under Art. IV, Section 16 of the New Mexico Constitution.

(2) The bill is probably too vague and indefinite in establishing a crime, (Fourteenth Amendment, U.S. Constitution; Art. II, Section 10, New Mexico Constitution) due to its use of the following language without more specific definition:

{*32} (a) "lawful custodian or his representative";

(b) "not open to the public";

(c) "who has determined";

(d) "contrary to its intended customary use";

(c) no definition of who may apply for a permit or whom it protects;

(f) the definition of public property in Sub-section E.

(3) The bill probably makes an unlawful delegation of legislative authority (Art. III, Section 1, New Mexico Constitution) in the use of the following language:

(a) "who has determined";

(b) "reasonable fee or charge . . . prescribed by the lawful custodian or his representative";

(c) "if he believes that the use . . . will not unreasonably interfere . . .";

(4) The provision for search and seizure of weapons, as written, is probably in violation of the Fourth Amendment of the United States Constitution, and Article II, Section 10 of the New Mexico Constitution.

(5) By including certain private property in the definition of public property, the proposed bill probably violates the equal protection of the laws and due process provisions of the Fourteenth Amendment to the United States Constitution and of Article II, Section 18 of the New Mexico Constitution.

(6) In some applications the bill, if enacted, could be held invalid as an unreasonable restriction on the right of freedom of speech, assembly and petition under the First and Fourteenth Amendments of the United States Constitution."

This office is always reluctant to express the opinion in advance of court determination that action duly undertaken by the Legislature is invalid; however, in this case, because of the many constitutional infirmities we see in this legislation, we must advise you of our serious doubts that the bill in question is, in spite of the faulty veto, a valid law.