

## Opinion No. 13-987

February 11, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. R. L. Baca, Speaker of the House of Representatives, Santa Fe, N. M.

### LEGISLATURE.

So-called "emergency clause" and form thereof.

### OPINION

{\*152} Late yesterday you asked me for my opinion as to the effect of a majority vote, less than two-thirds, upon an act which had been put upon its passage in the house with a section declaring that it was necessary for the preservation of the public peace, health or safety, so that it should take effect immediately upon its passage and approval in accordance with Section 23 of Article IV of the Constitution.

{\*153} My first impression was that the act should be considered as adopted, but to take effect only at the expiration of ninety days after the adjournment of the legislature; but upon careful consideration I have reached a different conclusion.

I have made an investigation to see whether any assistance could be had from the reports of adjudicated cases in other states having similar provisions, but without success. There is one case in Colorado which does not seem to be applicable because the language of the constitution of that state is somewhat different, so that the court held that the "emergency clause, to be effective, must be adopted by a vote of two-thirds of all the members elected to each house." That is to say, the clause to put it into effect immediately must be adopted by such a vote, although the whole act might have been adopted by a mere majority. This case is reported in 18 Colorado, page 291.

There are two Oklahoma cases in which it was held that the emergency clause was invalid because of certain provisions in the constitution which made it impossible for such bills as those under consideration, to be put into effect immediately upon their passage and approval; but the court still held that the act generally would take effect at the expiration of the ninety days after the legislature. It will be seen that these cases are not at all like the question presented by you to me. They are reported in 100 Pacific at page 559 and 110 Pacific at page 738. I do not believe there are any other cases even remotely bearing on this question unless they have been so recently decided that they have not yet been reported.

My view is that when an act is put upon its passage it stands before the house as a whole and must be adopted as a whole, or it fails. With a section providing for its taking effect immediately, a two-thirds vote is necessary. If a majority only vote for the bill, it

fails of passage. We cannot assume that even a mere majority would vote in favor of the bill if the clause providing for its taking effect at once were omitted. Unless it can so take effect it might be undesirable to that majority, and possibly of no value to anyone. I cannot see how you, as speaker, under such circumstances, could declare that a part of the act had been adopted and a part had been lost.

As a concrete illustration, which occurs to me probably because I am a member of the state board of equalization and confronted with a serious condition as to tax matters, it is quite clear at the present time that we must have legislation to improve and increase the valuation of property for purposes of taxation or the revenue of the state will not be sufficient to meet its necessary expenses including a very large interest charge. Various bills have been introduced having for their object changes in our present system of taxation, but none I believe thus far which would take effect immediately so that we would get improvement in the assessment of property which is to begin next month. These various bills are all looking toward some change in the future, of which we would not get any beneficial effect before the assessment and collections of next year. We must have some legislation to take effect immediately in order to get a proper assessment of property this year. A bill for that purpose would require a two-thirds vote, but if adopted by a mere majority could not take effect until the middle of June, when the time for effective *{\*154}* work in connection with assessments would be practically over. A mere majority of the legislature would not desire any such act, as it would be useless.

I venture to suggest for the consideration of the house the advisability of adopting a slightly different form to meet the requirements of the section of the constitution already referred to, so that such an embarrassing question as has arisen in the house might be avoided. Something like the following might be made to meet such exigencies:

This act is necessary for the preservation of the public peace, health and safety, and shall therefore take effect immediately upon its passage and approval, provided it be passed by a two-thirds vote of each house, but if passed by less than a two-thirds vote of each house, it shall take effect ninety days after the adjournment of the legislature.

If such a form be adopted, all difficulty could be avoided by the speaker declaring and having it made a matter of record that the act had passed either by the necessary two-thirds vote or by a mere majority.