

Opinion No. 35-905

February 16, 1935

BY: QUINCY D. ADAMS, Assistant Attorney General

TO: Honorable Clyde Tingley, Governor of New Mexico, Santa Fe, New Mexico.

{*45} My attention has been called to the fact that some question has arisen as to whether or not House Bill No. 103, relating to alternate jurors, violates Sec. 12 of Article 2 of the state constitution, which provides in part that:

"The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate."

It can be seen by an examination of the bill that it merely provides a method of replacing a juror who dies or for some other reason is discharged during the course of a trial. It does not change the number of jurors who decide the case. In 16 R.C.L., page 196, it is said:

"The constitutional provision that the 'right of trial by jury shall remain inviolate' means that it shall not be destroyed or annulled by legislation, nor so hampered or restricted as to make the provision a nullity. In this connection the term 'inviolable' connotes freedom from substantial impairment. It in no sense imports immunity from all regulation . . . And so the making of reasonable regulations and conditions in regard to the enjoyment of the right is not a denial or impairment thereof . . ."

Consequently it is my opinion that House Bill No. 103 does not violate said provision of the constitution and I know of no reason why it should not become a law.