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GERALD C. MANN
ATTORNEY GENERAL

Overruled by _____
Rudco Oil & Gas Co v Lemasters
146 SW2d 806

Honorable B. A. Steinhausen, Secretary
Board of Directors, Lower Neches Valley Authority
c/o Comet Rice Mills
Beaumont, Texas

Dear Sir:

Opinion No. 0-3275
Re: Effective date of House
Bill No. 1084.

We are pleased to comply with your request for our opinion on the above stated question.

House Bill No. 1084 being an Act to amend the statutes relating to the Lower Neches Valley Authority was enacted by the 47th Legislature under the following circumstances: June 16, 1941, passed by the House -115 ayes; 0 nays; June 18, passed by the Senate -28 ayes; 0 nays; July 2, vetoed by the Governor; July 3, passed by the House over veto -91 ayes; 19 nays; July 3, passed by the Senate over veto -27 ayes; 2 nays.

This Bill as originally enacted and as passed over the Governor's veto contains the following emergency clause:

"The importance of this legislation to the section of the State affected thereby creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days shall be, and the same is hereby, suspended, and this Act shall take effect and be in force from and after the passage thereof, and it is so enacted." (Emphasis ours.)

We quote the two provisions of the Constitution of Texas which are applicable to this question:

Article 3, Section 39. "No law passed by the Legislature, except the general appropriation act, shall take effect or go into force

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until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals."

Article 4, Section 14. "Every bill which shall have passed both houses of the Legislature shall be presented to the Governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. * * *

It is to be noted that in order to make effective the emergency clause providing that the Act shall take effect immediately it must be supported by a "vote of two-thirds of all the members elected to each House"; i. e., 100 members of the House and 21 members of the Senate; whereas, in order to override the Governor's veto it is only necessary that the Bill receive the votes of "two-thirds of the members present of the House in which the bill originated." It is to be noted that the Bill under consideration when passed over the Governor's veto received sufficient votes in the House to override the Governor's veto, but not sufficient votes to make the emergency clause effective. The question therefore resolves itself as to whether we may look to the vote upon the original passage of this Bill on June 16, to determine whether the emergency clause is effective or whether its effect depends upon the votes on July 3, on the day it was passed over the Governor's veto.

A Bill containing an emergency clause providing that it shall take effect immediately upon passage does become immediately effective if passed by a two-thirds majority of each

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House of the Legislature. *Worbes v. State*, (Tex. Ct. Cr. App., 1934), 71 S. W. (2d) 872. The courts may not look behind the facts or reasons stated by the Legislature in its emergency clause providing for immediate effect of a bill. *Little v. State*, 129 S. W. (2d) 307.

Unless both Houses of the Legislature passed the Bill with the requisite two-thirds majority it does not become effective until ninety days after the adjournment of the Legislature. *M. K. & T. Railway Co. of Texas v. McGlamory*, 92 Tex. 150.

In *Wilson v. Young County Hardware & Furniture Company* by the Ft. Worth Court of Civil Appeals, 262 S. W. 873, it was held that the vote upon the final passage of the Bill and not upon adoption of amendments controls the question. Buck, J., speaking for the Fort Worth Court of Civil Appeals in that case, said:

"Under notes in Ann. Cas. vol. 16, p. 977, the majority rule is said to be that the final passage of a bill within the meaning of a constitutional provision requiring a vote on final passage to be by ayes and nays is the vote taken upon the last reading of the bill upon the question whether it shall become a law, and does not include a vote subsequently taken by one branch of the Legislature upon concurring in the amendments made by the other branch. * * *. We are of the opinion that the majority rule should be followed, and that we must hold that the vote on the bill as finally passed by the Senate was the vote on final passage and the law was in effect immediately upon the concurrence by the House with the Senate amendment. * * *."

In *Ex parte May*, 40 S. W. (2d) 811, the Court of Criminal Appeals in Texas refused to follow the *Wilson* case, supra, and declared:

"* * *. The words 'final passage', as used in our constitution, mean final passage. They do not mean some passage before the final one, but the last one. They do not mean the passage of a part of a bill, or what is first introduced, and which may, by reason of amendment, become the least important. * * *."

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"* * *. It seems enough to say that a reasonable and logical interpretation of the controlling provision of the Constitution of this state confers upon the Legislature both the power, by a record vote with majority of two-thirds of the members of each house, to change the time within an act of the Legislature may ordinarily become effective, and requires that they exercise such authority and power at the time when they become aware of the terms of the law as finally agreed upon. Previous action upon a bill in its initial stages, before material and radical changes have been made, would not control."

In *Caples v. Cole*, 102 S. W. (2d) 173, the Supreme Court of Texas overruled the *Wilson* case, supra, and held in accordance with the *May* case, by the Court of Criminal Appeals, to the effect that the last and final vote of both Houses on a Bill in its final form determines whether the emergency clause providing that it go into effect immediately be operative. We quote from the opinion of Mr. Justice Sharp, in the *Caples v. Cole* case:

"Furthermore, we agree with the holding of the Court of Criminal Appeals in the *May* Case, and hold that this bill became effective immediately after its passage. It is clear that the object of the provision of the Constitution above quoted is that if a bill is to take effect immediately on its passage, it must contain an emergency clause and such bill must be passed by a vote of two-thirds of all the members elected to each house, and such vote to be taken by yeas and nays and entered upon the journals. We think the rule prescribed by the Constitution also applies to amendments and reports of conference committees. If this were not true, it is quite obvious how the rule could be abused.
* * *"

It is interesting to note that in spite of the conflict between the *Wilson* case, above cited, and the subsequent two cases on the question of whether the votes before or after the adoption of amendments control, all three cases are authority for the proposition that the last and final passage of the Bill determines the vote as to whether the emergency clause becomes effective. It is therefore our opinion, that in view of the fact that House

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Bill No. 1084 received the requisite two-thirds majority of all the members elected to both Houses upon its final passage prior to submission to the Governor, the emergency clause to the Bill was thereby enacted by the requisite two-thirds majority of both Houses. The subsequent vote on the Bill was not for the purpose of enacting the emergency clause but solely for the purpose of overriding the Governor's veto. As provided by Article 4, Section 14 of the Texas Constitution, the affirmative vote of two-thirds of the members present was sufficient for this purpose. Article 3, Section 39, and Article 4, Section 14, are two separate and distinct constitutional provisions, each created for a different purpose, and we believe that the two should not be construed to be interdependent. This is the rule declared by Lewis' Sutherland on Statutory Construction, Vol. 1, p. 111, where it is stated:

"It is held that an act with an emergency clause passed over the Governor's veto takes effect immediately."

The case cited for this statement is Commissioners Sinking Fund v. George, by the Kentucky Court of Appeals, 47 S. W. 779, wherein the court, faced with the identical question here presented, and construing constitutional provisions of Kentucky analogous to those of the Texas Constitution here under consideration, declared:

"* * *. It is contended that although there is an emergency clause in the bill, and it was passed by the two houses as the constitution requires, it cannot become a law for 90 days, unless the governor approves it. If the constitutional convention had intended that the will of the governor was to control on the matter of declaring an emergency, it would simply have said that the governor may declare an emergency, and put the act in force at once. We do not think the language and the spirit of the constitution make the approval of the governor a condition precedent to the taking effect of an act. The legislature can pass a bill, and it can, by the plain provisions of the constitution, become a law without the governor's approval. There may be a great necessity that the act should immediately become a law. And, as the legislature can pass a bill against the objections of the governor, it seems to us that it was never intended

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that the governor should have the power, by withholding his approval, to prevent the act from taking effect for 90 days after the adjournment of the general assembly which passed the act. The governor can delay the time, when the bill shall become a law, 10 days, by holding the bill without signing or returning it. It seems to us that, when an act becomes a law without his approval, it would be a strange construction of the constitution to allow the time to be postponed when it would take effect because the governor did not approve it. The governor vetoed the bill. It contained the emergency clause. The general assembly had the same power to pass the bill with an emergency clause as it had to pass it without such clause. And the clause was effective to put in operation the act. We think the language used, to wit, 'when approved by the governor,' refers to the time when the act would take effect if approved by him. However, when he disapproves it, then it does not take effect, unless passed, as the constitution requires, over his objection. This being done, it became a law immediately, if the legislature had declared an emergency. By considering sections 55 and 88 together, we think the conclusion we have reached is correct."

It is therefore our opinion that House Bill No. 1084 of the 47th Legislature became effective on July 3, 1941, the date of its passage, over the Governor's veto.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUL 25, 1941

George Sullivan
FIRST ASSISTANT
ATTORNEY GENERAL

By

Walter R. Koch
Walter R. Koch
Assistant

WRK:RS

