House Bill, No. 121, Legislative Session 1911, Construction Of. Governor, Authority to Recall a Bill From Secretary of State. Governor's Jurisdiction Over Bills, When Ceases.

The governor having disapproved House Bill 121 and filed the same with his objections with the secretary of state, such action was final and conclusive and said bill could not thereafter be withdrawn by the governor and approved and become a valid enactment of the twelfth legislative assembly.

April 8th, 1911.

Prof. R. W. Clark,
Bozeman, Montana.

Dear Sir:

I am in receipt of your letter of April 3rd, 1911, wherein you sub-

mit for my opinion the question as to whether a dairy specialist can now be employed for service at the Montana Agricultural College and Experiment Station under the provisions of house bill No. 121. In your letter you cite Sections 18 and 23 of the bill and your query seems to arise from an apparent conflict therein as to the time at which the appropriation becomes available.

I have made a thorough examination of house bill, No. 121 together with the endorsements thereon and correspondence relating thereto between the governor and secretary of state. In viw of the facts disclosed by this examination and the authorities which I have examined, I am constrained to hold that the bill is entirely inoperative and is not a law of the state of Montana.

The bill was passed by both houses of the legislature and transmitted by the lower house to the governor for his approval; prior to the receipt of this bill by the governor there had been lodged with him two bills one known as the Pure Food Bill, and the other known as the Weights and Measures Law; both of these bills had been approved by the governor and upon reading house bill, No. 121, he was of the opinion that all the matters provided for by that bill had been sufficiently covered by the two bills above mentioned and previously approved. Under this condition he transmitted to the secretary of state, after the adjournment of the legislature, house bill, No. 121, without his approval and accompanied by a letter setting forth his objections thereto. The return of the bill to the secretary of state and the accompanying letter stating his objections was made on March 8th, 1911. His letter contains the following language:

> "To approve the bill might result in confusion in the administration of the weights and measures law and the pure food law, because of the multiplicity of enactments."

The letter concludes as follows:

> "For the reasons herein announced I cannot approve house bill, No. 121."

The following endorsements appear upon the back of the enrolled bill in the office of the secretary of state:

> "March 10, 1911. Returned to the governor upon his request for further consideration.
>
> A. N. YODER,
>
> Secretary of State."
>
> "The act of disapproval of the within bill, of date of March 8th, 1911, is reconsidered and revoked and the bill is this day revoked.
>
> EDWIN L. NORRIS,
>
> March 10th, 1911. Governor."

Section 12, of Article 7, of the constitution of the state of Montana, provides, among other things as follows:

> "In case the governor shall fail to approve any bill after the final adjournment of the legislative assembly it shall be filed with his objections in the office of the secretary of state."

Under the action taken with reference to this bill as disclosed by the above excerpts and in view of the constitutional provisions above quoted the question arises as to whether the withdrawal of the bill after it had been filed with the governor's objections thereto in the office of the secretary of state was within the power of the executive. The general rule with regard to the power and authority of the governor to withdraw a bill after it has finally left his possession is stated in CYC, Vol. 36, page 961, as follows:

> "The governor's approval is not complete until the bill leaves his possession and control. Prior to that time he may reconsider his action and erase his signature. After the bill leave his possession he cannot regain control, erase his signature and return the bill vetoed unless the bill was irregularly passed and was wrongfully transmitted to him."
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> People v. MCullough, 210 Ill. 488; 71 N. E. 602.
>
> State v. Whisner, 35 Kan. 271; 10 Pac. 852.

In the same chapter of CYC, to which reference is here made it is held, and authority is cited to support the view, that the governor may at any time before relinquishing control of a bill reconsider the action already taken with regard to its approval or disapproval, and may reconsider such action and reach a different conclusion, and indeed, the cases go so far as to hold that where a bill receives the executive approval and the fact is reported by the governor's secretary to the house in which the bill originated, if the signature of the governor was attached thereto under the mistaken belief that he was signing another measure, and if he did not give to his secretary express direction to report his approval to the house, under those circumstances he may erase his signature and take a different action with regard thereto. But in the case under consideration the facts do not show any such mistake or inadvertance. The two bills previously approved, viz., weights and measures law and the pure food law were considered and approved by the governor, and upon consideration of house bill, No. 121, which the letter to the secretary of state shows to have been true, the governor reached the conclusion that the house bill, No. 121 could serve no good purpose, and he therefore disapproved the same. A portion of his letter which I have not set out above also calls attention to the fact that the appropriation carried by the bill for the employment and expenses of a dairy specialist, seems to him to be unnecessary, and that is an additional ground of objection on the part of the governor to the bill. It, therefore, seems clear that the governor was further advised of the purpose of the enactment when he wrote his letter stating his objections, dated March 8th, 1911. This letter and the bill having been transmitted to the secretary of state in accordance with the constitution and statutes and there having been no inadvertance or mistake on the part of the governor, the secretary of state under the law became custodian of the bill and it was no longer within the possession or control of the governor. That being the case, the examination of authorities compels me to hold that the further action of the governor in withdrawing the bill from the

office of the secretary of state, rescinding his former action, and approving the bill, were actions done without authority of law and are null and void. In support of this view you are referred to the case of Lanphier vs. Hatch, 19 Ill., page 282.

Also:

Tarlton vs. Peggs, 18 Ind. 24.

Crocker vs. Junkin, 113 N. W. 256.

Cooleys Constitutional Limitations, 7th, Edit. 218 to 221.

In view of these authorities and of the fact that I have not been able to find cases in point holding an opposite view, I have reached the conclusion that the disapproval of the governor and the filing of his objections to house bill, No. 121, with the secretary of state was final and conclusive upon March 8th, 1911, and that the law is not now a valid enactment of the twelfth legislative assembly.

Yours very truly,

ALBERT J. GALEN,
Attorney General.