

**House Bill 287, Legality of. Registration, of Electors.
Electors, Registration of.**

House Bill 287 (Laws 1915, Chap. 122) is an Act entitled "An Act to amend Chapter 113 of the laws of 1911, relating to the registration of electors in counties, cities, towns and school districts." The chapter referred to was amended by Chapter 74, Laws of 1913, which chapter is not mentioned in the new law. Held: The new law may be sustained as an original enactment, or as an amendatory statute.

April 9, 1915.

Hon. A. M. Alderson,
Secretary of State,
Helena, Montana.

Dear Sir:

Pursuant to your request for an opinion as to the legality of House Bill No. 287, you are advised as follows:

House Bill No. 287, Laws of 1915, is an Act entitled:

"An Act to amend Chapter 113 of the Laws of 1911, relating to the registration of electors in cities, counties, towns and school districts."

The Chapter referred to is found in the 1911 Session Laws, page 223, and is an original Act entitled:

"An Act providing for the creation of election precincts and for the registration of electors in county, cities, towns and school districts, and providing penalties for the violation thereof."

In 1913, Chapter 74 was enacted, and is found in the 1913 Session Laws at page 170. Its purpose was to amend the 1911 law. Its title is identical with that of House Bill 287 of the recent Session. It was in

effect an original Act, and from the time of its passage, stood as a substitute for the 1911 law. The preamble, however, recited:

"The Chapter 113 of the Laws of 1911 be amended to read as follows:"

No reference is made to this Act in the title of House Bill 287, but Section 37 thereof, expressly refers to and repeals it, as well as all other laws in conflict therewith. The question is now presented as to whether the title of House Bill 287 is sufficient, in view of the omission therefrom of reference to Chapter 74, Laws of 1913. To be strictly correct, the title of the new law should read:

"An Act to amend Chapter 113 of the Laws of 1911, *as amended by Chapter 74 of the Laws of 1913*, relating to the registration of electors in counties, cities, towns and school districts."

When, however, the title of House Bill 287 and the body of the Act are considered together, it is probable that the legislature had the purpose in view of repealing Chapter 74 of the Laws of 1913, and at the same time making the new measure operate as a substitute therefor. If this be correct, the legality of the process adopted is doubtful. We cannot assume, however, that such was the manifest intent of the legislature, but, on the other hand, we must consider the measure valid, unless its unconstitutionality is made to appear beyond a reasonable doubt. Such is the doctrine as laid down in the case of *In re O'Brien*, 29 Mont., 530, and since affirmed in a number of cases.

There are at least two theories upon which the law may be sustained, either of which is sound, and has the support of textwriters and judicial decisions. The one is to treat the new registration law as an original Act, and the other, to regard the omission of reference in the title to the Act of 1913, as immaterial.

If we regard the law as an original Act, so much of the title as appear below, within the parenthesis, may be considered as surplusage:

"An Act (to amend Chapter 113 of the Laws of 1911) relating to the registration of electors in counties, cities, towns and school districts."

The remainder of the title would then be ample to support the law. 36 Cyc. 1039, and cases cited, and would be impregnable to attack, as not within the five rules laid down in *State vs. McKinney*, 29 Mont. 375, and the four additional rules announced in *Evers vs. Hudson*, 36 Mont., 135. If we consider Chapter 113 of the Laws of 1911, as wiped out by Chapter 74 of the laws of 1913, the words "to amend Chapter 113 of the Laws of 1912, as found in the title of House Bill 287 becomes meaningless. Rule 9, as laid down in *Evers vs. Hudson*, supra, reads:

"Meaningless words and phrases may be disregarded by construction, and if, after such elimination, the title clearly expresses the subject of the Act, it is sufficient."

Sutherland on Statutory Construction in Section 142, cites a case where an Act was entitled:

"An Act to amend the charter of the town of Bissemmer, and to reincorporate the same as the city of Bissemmer, and to establish a charter therefor."

There was no act to incorporate the town of Bissemer. It was held that the words as to amendment should be treated as surplusage, and that the Act was valid as an original and substantive piece of legislation. See also Section 133 of the same work and 36 Cyc, page 1033.

House Bill No. 287 is exhaustive, comprehensive and symmetrical, and is clearly intended to be the law regarding the registration of electors in this State, and to supplant all previous legislation upon the subject. It may in my opinion be regarded as an original enactment, possessing a sufficient title to give force to all its provisions.

The fact that the title fails to mention Chapter 74, Laws of 1913, while the body of the Act expressly repeals it, is of no moment. The title need not express what former Acts are repealed.

Bowman vs. Hemlett, 166 S. W. 1008 (Ky.), 36 Cyc. 1031.

The express repeal has no greater force than would a general repealing clause, and it has never been contended that notice of such should be expressed in the title, for an intention to repeal all laws inconsistent with the proposed measure is necessarily implied, and need not be expressed in the title of a legislative bill.

Union Pacific Ry. Co. vs. Spragg, 69 Nebr. 48, 95 N. W. 46.

The other alternative, that House Bill No. 287 may be considered purely as an amendatory Act with a sufficient title, is also tenable. Chapter 74, of the Laws of 1913 is strictly an Act to amend Chapter 113 of the Laws of 1911; the title so indicates, and the preamble states:

"The chapter 113 of the Laws of 1911 be amended to read as follows:"

Chapter 113 was therefore in force as amended by Chapter 74. In as much as we are presumed to know the law, no one could be misled by the imperfect recital in the title of House Bill 287, for the obvious meaning conveyed by the title is that Chapter 113 is to be amended as it stood after the amendatory Act of 1913 was passed. No authority precisely in point has been found, but the following citations are illustrative and strongly presumptive of this view.

Sutherland Statutory Construction, Sec. 138;

Lambertson vs. Mayor of Hamilton, 82 Ga. p. 30;

In re Campbell Estate, 143 Cal. 623, 77 Pac. 674;

Willis vs. Mahon, 48 Mont. 140, 50 N. W. 1110, 31 Am. St. Rep. 626, 16 L. R. A. 281;

State vs. Mines, 38 W. Virginia, 125, 18 S. E. 470;

Sanders vs. Pensacola Provisional Municipality, 24 Fla. 226, 4 S. 801;

Harrison Township Advisory Board vs. State 170 Ind. 439; 85 N. E. 18;

Schmalz vs. Wooly, 57 N. J. Equity, 303, 41 Atlantic, 939; 73 Am. St. Rep. 637, 43 L. R. A. 86;

State vs. Courtney, 27 Mont. 378.

You are therefore, advised, House Bill 287, in my opinion, has a sufficient title, and is a constitutional measure.

Yours very truly,

D. M. KELLY,

Attorney General.