

Legislature—Senate Journal—House Journal—Resolutions—Emoluments.

A statute cannot be amended or repealed by resolution and the legislature cannot provide for the distribution of senate and house journals to the members of that assembly for their own use and benefit, as such action would be unconstitutional as increasing their emoluments.

R. N. Hawkins, Esq.,
Secretary of State,
Helena, Montana.

March 19, 1927.

My dear Mr. Hawkins:

You have requested my opinion on the following question: Should the secretary of state make distribution of the journals and session laws to the members of the legislative assembly, as provided in a resolution passed by the 20th legislative assembly, or should he distribute them, as provided by section 135, R. C. M. 1921?

Section 135, R. C. M. 1921, provides in part as follows:

“Immediately after the senate and house journals and the session laws mentioned in subdivision nine of the preceding session are bound, the secretary of state must distribute the same as follows:

“1. To the county clerk of each county one copy of the senate journal and one copy of the house journal for the use of the county.

"2. To the state historical library such number of copies of the senate and house journals, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange."

No further distribution of the senate and house journals is provided for. The twentieth legislative assembly has served notice on the secretary of state of the following resolutions signed by the secretary of the senate and the speaker of the house "to make a requisition on the state purchasing agent for 300 copies of the house journal of the twentieth legislative assembly, and to forward to each member of the house one copy of the house journal and one copy of buckram bound session laws of the twentieth legislative assembly." Should the secretary of state comply with section 135, supra, or with these resolutions?

The legislature, having enacted section 135, supra, it remains a law until amended or repealed, and this must be done as provided by the state constitution.

A resolution is defined by Funk & Wagnalls New Standard Dictionary as "a proposition adopted in legislatures distinguished from a bill." It is therefore apparent that a resolution is not of the same dignity as a bill which has been enacted into a law and therefore where a resolution is in direct conflict with the statute, the statute must prevail, for the reason that it is the law of the state, while a resolution is merely an expression of the wishes of the legislature.

Further, in an opinion by former attorney general Galen, volume 2, page 320, Attorney General Reports, it was held that section 15 of chapter 85, laws 1907, insofar as it gives to members of that legislative assembly copies of the revised codes of Montana to be held by such members as their personal property was in violation of the constitution and void, as being a law increasing their emoluments. I am in full accord with this opinion; and it necessarily follows that the legislature cannot do, by resolution, what it could not do by the enactment of a law.

Subdivision 6 of section 135 (supra) relating to the distribution of the session laws provides that copies of these session laws shall be distributed to the members of the legislative assembly.

It is therefore my opinion that the resolution above referred to does not amend the law, and that you should make distribution of the journals and session laws as provided in section 135.

Very truly yours,

L. A. FOOT,
Attorney General.