Constitution—Statutes—Amendment.

Under Section 25 of Article V of the Constitution a section constituting a part of a law may be amended and the reenactment and republication of the section as amended complies with the constitutional provision, and it is not necessary that there should be a reenactment and republication of other sections not affected by the amendatory act.

W. R. Flachsenhar, Esq., February 1, 1929.
Member of House of Representatives,
Helena, Montana.

My dear Mr. Flachsenhar:

You have requested my opinion whether it is legal for the legislature to amend a section of an act embracing several sections without reenacting the entire act.

Section 25 of Article V of the Constitution of Montana reads as follows:

> "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length."

The history of constitutional prohibitions such as are contained in the foregoing provision of our Constitution shows that their object was to prevent the enactment of amendatory statutes in terms so blind that the legislators themselves were sometimes deceived in regard to their effects and which the public would be unable to understand. They were aimed at the practice that at one time prevailed of amending a statute by providing in the new statute that certain lines in the prior statute should be stricken therefrom and certain new lines substituted therefor which led to interminable confusion.

The provisions of the different Constitutions of the United States relating to this subject are somewhat different in their phraseology but they are all aimed at this one general subject and the courts of the various states construing their respective constitutional provisions have arrived at generally the same conclusion. The constitutional provision most generally found is as follows:

> "No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at length."

The above provision is found in the constitutions of Indiana, Nevada, Oregon, Texas, Virginia, and Washington, and similar ones in Illinois, Kansas, New Jersey, Ohio, Michigan, Louisiana, Wisconsin, Utah, Missouri, and Maryland. Whenever the courts of these states have been called upon to construe this provision they have uniformly held that a reenactment of the sections as amended is sufficient. It will be observed, however, that the provision itself provides that the act or "section" amended shall be set forth and published at length.

While our provision of the Constitution does not specifically refer to sections, it does provide that so much of the law that is amended shall be reenacted and published at length. This seems to be a direct declaration that the entire specific law or act to which the amendment relates need not be reenacted but only that part of the law that is amended shall be reenacted and published at length. The legislature in 1895 enacted what is now Section 93, R.C.M. 1921, which reads as follows:

> "Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment."

It will be observed that this statute recognizes the amendment of a section or a part of a statute and amounts to a legislative interpretation of the constitutional provision in question that has existed for a long period of time.

The Supreme Court of Montana in the case of State ex rel. Hay, Jr., vs. Hindson, 40 Mont. 353, had before it House bill No. 335, which amended Section 3119, of the Revised Codes of 1907. The court said:

> "In order to make this change, our Constitution (Article V, Section 25) requires that the entire Section 3119 as thus amended should be reenacted and published at length, and this was done."

I fail to see any distinction between amending a section of the code in this manner and a section of a chapter in the legislative session laws. Many of the sections of the code were originally enacted in a single bill and constituted one act designated as a chapter in the session laws and were merely given new section numbers in the compilation of the code.

Section 5 of the Code of 1921 provides that the provisions of the code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof and not as new enactments.

I have failed to find any case which holds that where an existing law is amended in part that the part not amended must also be reenacted and published, except in two jurisdictions—Louisiana and Indiana. The courts of these two states in some old cases held that under the peculiar provisions of their constitutions that this had to be done, but in Louisiana the constitution has since been amended and this is no longer required. All the other cases that I have been able to find upon the subject in all jurisdictions hold that the reenactment and republication of only that part of the law that is amended need be made.

It is therefore my opinion that under Section 25 of Article V of our Constitution a section constituting a part of a law may be amended and that the reenactment and republication of the section as amended complies with the constitutional provision.

Very truly yours,
L. A. FOOT,
Attorney General.
By L. V. Ketter, First Assistant.