

Opinion No. 418

Statutes—Legislative Assembly—Clerical Error in Amendatory Legislation.

HELD: In subdivision (b) of subdivision 4 of Section 2, Chapter 159, Laws of 1933, amending Section 1758, R. C. M. 1921, the reference to Sections 9594-9596, R. C. M. 1921, instead of to Sections 7594-7596, R. C. M. 1921, was clearly a clerical error and the plain intent will control the clerical error.

January 12, 1934.

You have addressed this office as follows: "Subdivision (b) of subdivision 4 of Section 1758 of the Revised Codes of Montana of 1921, appearing on page 329 of the Session Laws of the 23rd Assembly reads as follows:

"Subdivision (b). A chattel mortgage on a motor vehicle is hereby excepted from the provisions of Sections 8278 and 8280 inclusive of the Revised Codes of Montana of 1921, and a conditional sales contract on a motor vehicle is hereby excepted from the provisions of Sections 9594 and 9596 inclusive of the Revised Codes of Montana of 1921, insofar as they relate to the filing of chattel mortgages and conditional sales contracts except the duration of said liens shall be and remain as specified in Section 8279 of the Revised Codes of Montana of 1921."

"You will observe that a conditional sales contract on a motor vehicle is therein excepted from the provisions of 9594 and 9596 inclusive of the Revised Codes of Montana 1921 insofar as they relate to filing. These sections—9594 and 9596—are not germane to this subject at all and it is apparent that an error was made, either in drawing the bill or enrolling, as without question the sections which apply are No. 7594 and No. 7596.

"In line with the new provisions of Section 1758 as amended by the 23rd

Assembly, we have been advising all dealers that duplicate original copies of conditional sales contracts must be filed with the Registrar at Deer Lodge and if, because of the error in citing the correct section numbers and conditional sales contracts being excepted from the application thereof, it seems to us that it is entirely possible that duplicate and triplicate originals of sales contracts will have to be taken and filed both in the county where the property is located and also in the office of the Registrar at Deer Lodge. We will appreciate your opinion in the matter at your convenience."

Sections 9594 and 9596, inclusive, deal with corporations and have no relation to chattel mortgages or sales contracts, while 7594 and 7596, inclusive, specifically deal with the latter. Section 2 of Chapter 159, Laws of 1933, amending Section 1758 R. C. M. 1921, under subdivision 4, at page 329, deals with the same subject as that covered by 7594-7596.

Clearly the 1933 Act referring to 9594-9596 instead of to 7594-7596 was a clerical error and the plain intent will control the clerical error.

In *Hollibaugh v. Hehn*, 79 Pac. 1044 an act of the State of Wyoming was before the court. The act was passed in 1901, purporting to amend Section 3299 of the Revised Laws of 1887. It was found that neither the title nor body of the bill was germane to the subject matter of Section 3299 of the 1887 revision of the laws, but was germane to Section 3299 of the 1899 revision. The court held that the reference to 1887 instead of to 1899 was a clerical error, and, the plain intent of the legislature being obvious from the body of the act, the intent would control over the clerical error.

In *People v. Lord, et al.*, 41 N. Y. S. 343, the holding is to the same effect. In this case the amendatory act referred to Section 329, which was not germane, while the title and body of the act related to the subject dealt with by Section 339. The court said: "Inaccuracies with regard to the numbering of an act, or the sections thereof, when palpable, ought not to be permitted to nullify the legislative intent. Such inaccuracies may be cured, and the real sense clarified, by reference to the context and surroundings." There

are many other decision along the same lines.

We have no doubt our Supreme Court would hold that the reference to Sections 9594-9596 was intended to read 7594-7596.