

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON)

Respondent,)

v.)

FRANK A. WALLMULLER,)

(your name))

Appellant.)

2016 MAY 31 AM 9:07

STATE OF WASHINGTON

No. 48034-4-II

BY _____

DEPUTY
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, ~~FRANK WALLMULLER~~, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

~~APPELLANT DENIES & CHALLENGES THE JURISDICTION OF THE TRIAL COURT OVER THE SUBJECT-MATTER IN THIS CASE FOR THE REASONS EXPLAINED IN THE FOLLOWING MEMORANDUM FILED AS COURT DOCKET NUMBER 28 ON OR ABOUT FEBRUARY 10, 2017.~~

Additional Ground 2

~~APPELLANT CHALLENGES THE CONSTITUTIONALITY OF RCW 4.8.017 AS CONTRARY TO WASHINGTON STATE CONSTITUTION ARTICLE IV, SECTION 10 STATE OF LAWS. ALL "LAW" MUST CONTAIN ENACTING CLAUSE ON THE FACE OF A LAW.~~

If there are additional grounds, a brief summary is attached to this statement.

Date: MAY 23, 2016

Signature: Frank A. Wallmuller

MEMORANDUM OF LAW

I

The Nature of Subject Matter Jurisdiction

The jurisdiction of a court over the subject matter has been said to be essential, necessary, indispensable and an elementary prerequisite to the exercise of judicial power. 21 C.J.S., "Courts," §18, p.25. A court cannot proceed with a trial or make a judgment without such jurisdiction existing.

It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon this lack cannot be waived and may be asserted at any time. Matter of Green, 313 S.E. 2d 194(N.C.App. 1984).

Subject-matter jurisdiction cannot be conferred by waiver or consent, and may be raised at any time. Rodrigues v. State, 441 So.2d 1129 Fla.App. 1983). The subject-matter jurisdiction of a criminal case is related to the cause of action in general, and more specifically to the alleged crime or offense which creates the action.

The subject-matter of a criminal offense is the crime itself.

Subject-matter in its broadest sense means the cause; the object; the thing in dispute. Stillwell v. Markham, 10 P.2d 15,16, 135 Kan. 206 (1932).

An information, indictment or complaint in a criminal case is the main means by which a court obtains subject-matter jurisdiction, and is "the jurisdictional instrument upon which the accused stands trial." State v. Chatmon, 671 P.2d 531,538 (Kan. 1983). The complaint is the foundation of the jurisdiction of the magistrate or court. Thus, if these charging

FILED
COURT OF APPEALS
DIVISION II

2016 JUN 20 AM 9:16

STATE OF WASHINGTON

BY DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION II

STATE OF WASHINGTON,)

Respondent,)

v.)

FRANK A. WALLMULLER,)

Appellant.)

Court of Appeals Cause No. 42034-4-II

AMENDED
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, FRANK WALLMULLER have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground III

Appellant contends that SEVERAL OF THE CONDITIONS OF HIS COMMUNITY CUSTODY IMPOSED AS PART OF HIS SENTENCE ARE UNCONSTITUTIONALLY VAGUE, OVERBROAD OR NOT CRIME-RELATED AS DEFINED BY THE WASHINGTON SUPREME COURT CASE OF STATE OF WASHINGTON V. ERIC G. BAH, No. 799881, EN BANC, FILED: OCTOBER 9, 2008, i.e. PAGE(S) 13 to PAGE 26, AUTHORED BY JUSTICE BARBARA A. MADSEN.

If there are additional grounds, a brief summary is attached to this statement.

Date: nunc pro tunc
MAY 23, 2016

Signature: Frank A. Wallmuller

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY THAT ON THE 16th DAY OF JUNE, 2016, I CAUSED TO BE MAILED A TRUE AND CORRECT COPY OF AN "AMENDED STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW, NULL PRO TUNC MAY 23, 2016" BY PLACING THE CONTENTS IN A POSTAGE PREPAID ENVELOPE AND PLACING SAID ENVELOPE INTO THE U.S. MAIL, ADDRESSED TO THE FOLLOWING PERSON(S):

DAVID C. PONZALLO, CLERK
COURT OF APPEALS, DIV. II
950 BROADWAY, SUITE 300
TACOMA, WA. 98402-3694

AND

MASON COUNTY PROSECUTOR
APPEALS DEPARTMENT
P.O. BOX # 639
SHELTON, WA. 98584

Frank Wallmüller

PAGE - 2

AND

LISE ELLNER, ESQ.
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instruments are invalid, there is a lack of subject-matter jurisdiction.

Without a formal and sufficient indictment or information, a court does not acquire subject matter jurisdiction and thus an accused may not be punished for a crime. Honomichl v. State, 333 N.W.2d 797,798 (S.D. 1983).

A formal accusation is essential for every trial of a crime.

Without it the court acquires no jurisdiction to proceed, even with the consent of parties, and where the indictment or information is invalid the court is without jurisdiction. Ex parte

Carlson, 186 N.W. 722,725, 176.Wis. 538 (1922).

Without a valid ^{com}plaint any judgment or sentence rendered is "void ab initio." Ralph v. Police Court of El Cerrito, 190 P.2d 632,634, 84 Cal. App.2d 257 (1948).

Jurisdiction to try and punish for a crime cannot be acquired by the mere assertion of it, or invoked otherwise than in the mode prescribed by law, and if it is not so acquired or invoked any judgment is a nullity. 22.C.J.S., "Criminal Law," §167, p.202.

The charging instrument must not only be in the particular mode or form prescribed by the constitution and statute to be valid law, the charging instrument is insufficient and no subject matter jurisdiction exists for the matter to be tried.

Where an information charges no crime, the court lacks jurisdiction to try the accused. People v. Hardiman, 347 N.W.2d 460,462, 132 Mich.App. 382 (1984).

[W]hether or not the complaint charges an offense is a jurisdictional matter. Ex parte Carlson, 186 N.W. 722,725, 176.Wis. 538 (1922).

Where a 'law' does not exist or does not constitutionally exist, or where the law is invalid, void or unconstitutional, there is no subject matter jurisdiction to try one for an offense alleged under such a law.

If a criminal statute is unconstitutional, the court lacks subject-matter jurisdiction and cannot proceed to try the case. 22 C.J.S. "Criminal Law," §157, p.189; citing People v. Katrinak, 185 Cal.Rptr. 869, 136 Cal.App.3d 145 (1982).

Where the offense charged does not exist, the trial court lacks jurisdiction. State v. Christensen, 329 N.W.2d 382, 383, 110 Wis. 538 (1983).

The Petitioner asserts that the laws charged against him are not valid and do not constitutionally exist as they do not conform to certain constitutional prerequisites, and thus, are no laws at all, which prevents subject matter jurisdiction to the trial-court.

The information in question allege that the Petitioner has committed several crimes by the violation of certain laws which are listed in said information, to wit:

Count 1: RAPE OF A CHILD 1ST DEGREE

Count 2: EXPLOITATION OF A CHILD, SEXUALLY

The Petitioner has been informed that these laws or statutes used in the information against him are located in and derived from a collection of books entitled "Revised Codes of Washington, also referred to as RCW's." Upon looking up these laws in that publication, he realized that they do not adhere to Constitutional Provisions of the Washington Constitution.

By Article 2 of the Constitution of Washington (1889), all lawmaking authority for the State is vested in the Legislature of Washington. This Article also prescribes certain forms, modes and procedures that must be followed in order for a valid law to exist under the Constitution. It is fundamental that nothing can be a law that is not enacted by the Legislature prescribed in the Constitution, and which fails to conform to Constitutional form, prerequisites or prohibitions. These are the grounds for someone challenging the subject-matter jurisdiction of the Court that entered judgment, since the validity of a law on a information, indictment or complaint goes to the jurisdiction of a Court. The following explains in authoritative detail why the laws cited in the information against the Petitioner are not Constitutionally valid Laws.

II

By Constitutional Mandate, All Laws Must Have An Enacting Clause

Every State Constitution (Except: Virginia, Pennsylvania, Georgia, Delaware and the Federal Constitution) mandates that an enacting clause be part of each and every law properly enacted by the State Legislature. In the case of the four states and federal government, whose Constitutions lack such a mandate, states and federal Supreme Courts have consistently ruled that an enacting clause is never the less a requirement of any properly enacted law.

Those and countless other Supreme Courts have further ruled that any law which lacks a required Constitutionally established enacting clause is void on its face and need not be obeyed.

One of the forms that all laws are required to follow by the Constitution of Washington (1889), is that they contain an enacting style or clause. This provision is stated as follows:

Article II, Sec. 18: The style of the laws of the state shall be:

"Be it enacted by the Legislature of the State of Washington."

And no laws shall be enacted except by bill.

None of the laws cited in the information against the Petitioner, as found in the "Revised Codes of Washington," 2008, do ~~not~~ contain any Constitutional enacting clause.

The Constitutional provision which prescribes an enacting clause for all laws is not directory, but is mandatory. This provision is to be strictly adhered to, as asserted by the Supreme Court of Minnesota:

Upon both principle and authority, we hold that article 4, §13, of our constitution, which provides that "the style of all laws of this state shall be, 'Be it enacted by the legislature of the state of Minnesota,'" is mandatory, and that a statute without any enacting clause is void. Strict conformity with the Constitution ought to be an axiom in the science of government. Sjoberg v. Security Savings & Loan Assn, 75 N.W. 1116, 73 Minn. 203,212 (1898); affirmed in Freeman v. Goff, 287 N.W. 238,241 (Minn. 1939); State v. Naftalin, 74 N.W.2d 249,262 (Minn. 1956); State v. Zimmerman, 204 N.W. 803,812 (Wis. 1925).

While a few courts at an early period held that such provision were merely directory, the great weight of authority has deemed them to be mandatory. In speaking on the mandatory character of enacting clause provisions one legal textbook states:

[T]he view that this provision is merely directory seems to conflict with the fundamental principle of Constitutional construction that whatever is prohibited by the Constitution, if in fact done, is ineffectual. And the vast preponderance of authority holds such provisions to be mandatory and that a

failure to comply with them renders a statute void. Ruling Case Law, vol. 25, "Statute," §84, p. 836.

When something is directory its usage is only an advisable guide, and can be ignored. But the requirement of an enacting clause is based upon its ancient usage in legislative acts.

A declaration of the enacting authority in laws is a usage and custom of great antiquity, * * * and a compulsory observance of it is founded in sound reason. Caine v. Robbins, 131 P.2d 516, 518, 61 Nev. 416 (1942).

The dangers of not treating such provisions as mandatory have been noted:

It seems to us that the rule which gives to the courts and other departments of the government a discretionary power to treat a Constitutional provision as directory, and to obey it or not, at their pleasure, is fraught with great danger to the government. We can conceive of no greater danger to constitutional government, and to the rights and liberties of the people, than the doctrine which permits a loose, latitudinous, discretionary construction of the organic law. Hunt v. State, 3 S.W. 233,235, 22 Tex.App. 396 (1886).

That an enacting clause provision is mandatory and not directory, and that its absence renders a law invalid, was also held by the Supreme Court of South Carolina, Smith v. Jennings, 45 S.E. 821, 67 S.C. 324 (1903), and The Supreme Court of Indiana, May v. Rice, 91 Ind. 546 (1883). These provisions relating to the mode of enacting laws "have been repeatedly held to be mandatory, and that any legislation in disregard thereof is unconstitutional and void." State v. Burlington & M. R.R. Co., 84 N.W. 254, 255, 60 Neb. 741 (1900).

Thus, laws which fail to adhere to the fundamental concept of containing an enacting clause lose their authority as law. So it would seem quite clear that the lack of the Constitutional enacting clause on the laws used in the "Revised Codes of Washington," against the Petitioner have no sign of proper authority and are void as laws. It was not a choice of Congress or the Legislature to approve laws which have no enacting style. The use of such form and style for all laws is mandatory, and any failure to comply with it for any reason, such as for convenience, renders the law void on its face.

III

What Is The Purpose Of The Constitutional Provision For An Enacting Clause?

To determine the validity of using laws without an enacting clause against citizens, we need to determine the purpose and function of an enacting clause; and also to see what problems or evils were intended to be avoided by including such a provision in our State Constitution. One object of the constitutional mandate for an enacting clause is to show that the law is one enacted by the legislative body which has been given the lawmaking authority under the Constitution.

The purpose of thus prescribing an enacting clause--"the style of the act"--is to establish it; to give it permanence, uniformity, and certainty; to identify the act of legislation as of the general assembly; to afford evidence of its legislative statutory nature; and to secure uniformity of identification, - and thus prevent inadvertence, possible mistake and fraud. State v. Patterson, 4 S.E. 350, 352, 98 N.C. 660 (1887); 82 C.J.S. "Statutes," §65, p. 104; Joiner v. State, 155 S.E.2d 8, 10, 223 Ga. 367 (1967).

To fulfill the purpose of identifying the lawmaking authority of a law, it has been repeatedly declared by the courts of this land that an enacting clause is to appear on the face of every law which the people are expected to follow and obey.

The almost unbroken custom of centuries has been to preface laws with a statement in some form declaring the enacting authority. The purpose of an enacting clause of a statute is to identify it as an act of legislation by expressing on its face the authority behind the act. 73 Am.Jur.2d, "Statute," §93, p. 319,320; Preckel v. Byrue, 243 N.W. 823,826, 62 N.D. 356 (1932).

For an enacting clause to appear on the face of a law, it must be recorded or published with the law so that the public can readily identify the authority for that particular law which they are expected to follow. The "RCW's" used in the information against the Petitioner have no Constitutional enacting clause. They, thus, cannot be identified as acts of legislation of the State of Washington (1889), since a law is mainly identified as a true and Constitutional Law by way of its enacting clause. The Supreme Court of Georgia asserted that a statute must have an enacting clause, even though their State Constitution had no provision for the measure. The Court stated that an enacting clause establishes a law or statute as being a true and authentic law of the State:

The enacting clause is that portion of a statute which gives it jurisdictional identity and constitutional authenticity. Joiner v. State, 155 S.E.2d 8,10 (Ga. 1967).

The failure of a law to display on its face an enacting clause deprives it of essential legality, and renders a statute which omits such clause as "a nullity and of no force of law." Joiner v. State, supra. The statute RCW's cited in the information have no jurisdictional identity and are not authentic laws under the Washington Constitution Art.2, Sec.18.

The "laws" used against the Petitioner are unnamed. They show no sign of Constitutional Authority on their face, as recorded in the "Revised Codes of Washington!" They carry with them no evidence that the Legislature of Washington, Pursuant to Article 2, Sec.18 of the Washington Constitution. (1889), is responsible for these laws. Without a Constitutional Enacting Clause the laws referenced to in the information have no official evidence that they are from an authority which the Petitioner is subject to or required to obey.

The purported laws in the information, which the Petitioner is said to have violated, are referenced to with various laws found printed in the "Revised Codes of Washington book. Having looked up the laws charged against the Petitioner in this book; there was no Constitutionally established and required enacting clause for any of these laws on their face. A citizen is not expected or required to search through other records or books for the enacting authority. If such enacting authority is not "on the face" of the laws which are referenced in an information, then "they are not laws of this state;" and thus, are not laws the Petitioner is subject to obey.

In speaking on the necessity and purpose that each law be prefaced with an enacting clause, the Supreme Court of Tennessee quoted the first portion of Sjoberg v. Security Savings & Loan Assn, 73 Minn. 203 (1898) case and then stated:

The purpose of provisions of this character is that all statutes may bear upon their faces a declaration of sovereign authority by which they are enacted and declared to be the law, and to promote and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in enforcement of laws. State v. Burrow, 104 S.W. 526,529, 119 Tenn. 376 (1907).

The use of an enacting clause does not merely serve as a "flag" under which bills run the course through the legislative machinery. Vaughn & Ragsdale Co. v. State Bd. of Eq., 96 P.2d 420,424 (Mont. 1939).

Any purported statute which has no enacting clause on its face, is not legally binding and obligatory upon the people, as it is not Constitutionally a law at all. The Supreme Court of Michigan, in citing numerous authorities said that an enacting clause was a requisite to a valid law since the enacting provision was mandatory:

It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. People v. Dettenthaler, 77 N.W. 450,451, 118 Mich. 595 (1898); citing Swann v. Buck, 40 Miss. 270.

The laws in the "Revised Codes of Washington" do not show on their face the authority by which they are adopted and promulgated. There is nothing on their face which declares they should be law, or that they are of the proper legislative authority in this State. So, the Petitioner asks this Court of Constitutional Jurisdiction to Dismiss this Case With Prejudice for Lack of Subject Matter Jurisdiction.

ARGUMENT

ENACTING CLAUSES IN THE PUBLICATION OF STATUTE BOOKS

While it has been well decided that the passage of a bill in the legislature without an enacting clause on the bill renders it void as a law, we need to consider the result of not using an enacting clause after it leaves the legislature. This is the important question today in light of the fact that the state "Codes" and "Revised Statutes" and the U.S. Code" are publications which purport to be law, but which use no enacting clauses. Is a publication of a law without an enacting clause a valid and lawful law?

If laws are only required to have an enacting clause while in the legislative system, only to be thereafter removed, then what is their value and purpose to the public? If they are to serve as evidence of a law's legislative nature, and as identification of its source and authority as a law, what good does that function do only for the legislators? The vast majority of the public never sees the bill under consideration until it passes and is printed in public records or statute books. They generally only see the finished "law".

When we read the provisions which require an enacting clause, they say that "all laws shall...", or "the laws of this State shall ..." The terms "bill" and "law" are clearly distinguished from one another in most constitutions in prescribing the procedure of legislative process, such as:

"No law shall be passed except by bill"

"No bill shall become a law except by a vote of a majority."

"Every bill which shall pass both houses shall be presented to the governor of the State; and every bill he approves shall become a law."

A bill is a form of a law presented to a legislature. "A bill does not become law until the constitutional prerequisites have been met." State v. Naftalin, 74 N.W. 2d. 249, 261, 246 Minn. 181 (1956). Thus a bill is something that becomes a law. Laws do not exist only when the legislative process is followed and completed as prescribed in the constitution.

Clearly, the legislature cannot enact a law. It merely has the power to pass bills which may become laws when signed by the presiding officer of each house and are approved and signed by the Governor. Vaughn & Ragsdale Co. v. State Bd. of Eq., 96 P.2d 420, 423 (1939).

Since all constitutional provisions place the requirement of an enacting clause on "laws" it includes the statute as it exists outside the legislative process, that is, as it is published in statute books. We have to also regard the fundamental maxim which states: "A law is not obligatory unless it be promulgated." Black's Law Dictionary, 2d edition, p. 826. An act is not even regarded as a law, or enforceable as a law, unless it be made publicly known. This is usually done through a publication by the proper public authority such as the Secretary of State. But a law is not properly or lawfully promulgated without an enacting clause or title published with the law.

Since the constitution requires "all laws" to have an enacting clause, it makes it a requirement on published laws as well as on bills in the legislature. If the constitution said "all bills" shall have an enacting clause, then their use in publications would not be required.

That published laws are to have an enacting clause is made clear by the statement commonly used by legal authorities that an enacting clause of a law is to be "on its face." To be on its face means to be in the same plain of view.

Face has been defined as the surface of anything; especially the front, upper, or outer part or surface; that which particularly offers itself to the view of a spectator. *Cunningham v. Great Southern Life Ins. Co.*, 66 S.W. 2d. 765, 773 (Tex. Civ. App.).

The face of an instrument is that which is shown by the language employed without any explanation, modification or addition from extrinsic facts or evidence. *In re Stoneman*, 146 N.Y.S. 172, 174.

For the enacting clause to be of any use it must appear with the law, that is, on its face, so that all who look at the law know that it came from the legislative authority designated by the Constitution. The enacting clause would not serve its intended purpose if not printed in the statute book on the face of the law.

The purpose of an enacting clause in legislation is to express on the face of the legislation itself the authority behind the act and identify it as an act of legislation. *Preckel v. Byrne*, 243 N.W. 823, 826, 62 N.D. 356 (1932).

The purpose of provisions of this character [enacting clauses] is that all statutes may bear upon their faces a declaration of the sovereign authority by which they are enacted and declared to be the law, and to promote

and preserve uniformity in legislation. Such clauses also import a command of obedience and clothe the statute with a certain dignity, believed in all times to command respect and aid in the enforcement of laws. (State v. Burrow, 104 S.W. 526, 529, 119 Tenn. 376 (1907)).

It is necessary that every law should show on its face the authority by which it is adopted and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. People v. Dettenthaler, 77 N.W. 450, 451, 118 Mich. 595 (1898); citing Swan v. Buck, 40 Miss. 268 (1866).

A law is "promulgated" by its being printed and published and made available or accessible by a public document such as an official statute book. When this promulgation occurs, the enacting clause is to appear "on the face" of that law, thus being printed in that statute book along with the law.

Enacting clauses traditionally appear right after the title and before the body of the law, and when printed, whether on a bill or in a statute book, it is then regarded as being on the face of the law. It cannot be in some other record or book, as stated by the Supreme Court of Minnesota:

If an enacting clause is useful and important, if it is desirable that laws shall bear upon their face the authority by which they are enacted, so that the people who are to obey them need not search legislative and other records to ascertain the authority, then it is not beneath the dignity of the framers of a constitution, or unworthy of such an instrument, to prescribe a uniform style for such enacting clause. Sjoberg v. Security Savings & Loan Assn., 73 Minn. 203, 213, 75 N.W. 1116 (1898).

This case dealt with "the validity of Laws 1897, c. 250," and it was held that "Law 1897, c. 250, is void." While the court mainly decided this because the law had no enacting clause when signed by the governor, it clearly expressed that if laws are to be regarded as valid laws of the state, they "must express upon their face the authority by which they were promulgated or enacted." The law was published in the statute book without an enacting clause (See Fig. 1). The law was thus challenged as being "unconstitutional" because it "contains no enacting clause whatever."

The enacting clause must be readily visible on the face of the statute so that citizens don't have to search through the legislative journals or other records or books to see if one exists. Thus a

street, road, sidewalk, park, public ground, ferry boat, or public works of any kind in said city, village or borough, or by reason of any alleged negligence of any officer, agent, servant or employe of said city, village or borough, the person so alleged to be injured, or some one in his behalf, shall give to the city or village council, or trustees or other governing body of such city, village or borough, within thirty days after the alleged injury, notice thereof; and shall present his or their claim to compensation to such council or governing body in writing, stating the time when, the place where and the circumstances under which such alleged loss or injury occurred and the amount of compensation or the nature of the relief demanded from the city, village or borough, and such body shall have ten days' time within which to decide upon the course it will pursue with relation to such claim; and no action shall be maintained until the expiration of such time on account of such claim nor unless the same shall be commenced within one year after the happening of such alleged injury or loss.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 249.

An act to amend section two thousand eight hundred and six (2806) of the general statutes of one thousand eight hundred and ninety-four (1894), relating to the capital stock of manufacturing corporations.

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. That section two thousand eight hundred and six of the general statutes of one thousand eight hundred and ninety-four be amended so as to read as follows:

Sec. 2806. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of not less than ten and not more

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved April 23, 1897.

CHAPTER 250.

An act to amend section twenty (20) of chapter one hundred and thirty-one (131) of general laws of Minnesota for one thousand eight hundred and ninety-one (1891), relating to building, loan and savings associations doing a general business.

SECTION 1. That section twenty (20) of chapter one hundred and thirty-one (131) of the general laws of one thousand eight hundred and ninety-one (1891) is hereby amended to read as follows:

Sec. 20. If it shall appear to said public examiner from any examination made by him, or from any report of any examination made by him, or from any annual or semi-annual report aforesaid, that any corporation governed by this act is violating its charter, or the law, or that it is conducting business in an unsafe, unauthorized, or dishonest manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct conformity with the requirements of its charter and of the law; and whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply with such order aforesaid within thirty days from the date thereof, or if it has become apparent that there is such a deficiency in its assets that the purpose for which the association was organized cannot be carried out, the public examiner may, if such corporation be organized under the laws of the state of Minnesota, forthwith take possession of the books, records and the assets of every description of such corporation and shall at once proceed to make a careful and detailed examination of the condition of the affairs of such corporation; and the books, records and assets of such corporation so held by him shall not be subject to levy or attachment or garnishment at any time while under his control. If at the close of such examination it shall appear to the public examiner that such corporation is able to complete

Fig. 1—An excerpt from *General Laws of the State of Minnesota, 1897*. Chapter 250 appears in this statute book without an enacting clause which resulted in its being declared "void" in *Sinberg v. Security Savings & Loan Assn.*, 73 Minn. 203. Note that the law on the adjacent page (Chapter 249) has the required enacting clause.

statute book without the enacting clause is not a valid publication of laws. In regards to the validity of a law that was found in their statute books without an enacting clause, the Supreme Court of Nevada held:

Our constitution expressly provided that the enacting clause of every law shall be, "The people of the state of Nevada, represented in senate and assembly, do enact as follows." This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people, in their sovereign capacity, to the legislature, requiring that all laws, to be binding upon them, shall, upon their face, express the authority by which they were enacted; and, since this act comes to us without such authority appearing upon its face, it is not a law." State of Nevada v. Rogers, 10 Nev. 120, 261 (1875): cited with approval in: People v. Dettenthaler, 77 N.W. 450, 452, 118 Mich. 595 (1898); Kefauver v. Spurling, 290 S.W. 14, 15, 154 Tenn. 613 (1926).

The manner in which the law came to the court was by the way it was found in the statute book, cited by the Court as "Stat. 1875, 66," and that is how they judge the validity of the law. Since they saw that the act, as it was printed in the statute book, had an insufficient enacting clause on its face, it was deemed to be "not a law." It is only by inspecting the publicly printed statute book that the people can determine the source, authority & authenticity of the law they are expected to follow.

The Supreme Court of Arkansas, in construing what are the essentials of law-making, and what constitutes a valid law, stated the following:

[A] legislative act, when made, should be a written expression of the legislative will, in evidence, not only of the passage, but of the authority of the law-making power, is nearly or quite a self-evident proposition. Likewise, we regard it as necessary that every act, thus expressed, should show on its face the authority by which it was enacted and promulgated, in order that it should clearly appear, upon simple inspection of the written law, that it was intended by the legislative power which enacted it, that it should take effect as law. These relate to the legislative authority as evidence of the authenticity of the legislative will. These are features by which courts of justice and the public are to judge of its authenticity and validity. These, then, are essentials of the weightiest importance, and the requirements of their observance, in the enacting and promulgation of laws, are absolutely imperative. Not the least important of these essentials is

the style or enacting clause. Vinsant, Adm'x v. Knox, 27 Ark. 266, 284, 285 (1871).

The common mode by which a law is "promulgated" is by it being printed and published in some authorized public statute book. Thus that mode of promulgation must show the enacting clause of each law therein on its face, that is, on the face of the law as it is printed in the statute book. This is the only way that the "courts of justice and the public are to judge of its authenticity and validity."

The decision in the Vinsant case was later approved by the Court in a case where a man was convicted of failing to follow an animal health law — "the Tick Eradication Law." He appealed by demurrer on the basis that the law claimed violated in the indictment did not have an enacting clause as found in the statute book. The Court said:

The appellant demurred to the indictment on the ground that the facts stated do not charge a public offense. The appellant contends that Act 200 of the Acts of 1915, p. 804, providing a method for putting in operation the tick eradication law in Pike county, was void because it has no enacting clause. Appellant is correct in this contention. The act contains no enacting clause, and, under the decisions of this court, such defect renders it a nullity. Article 5, § 19, and article 29, amend. 10, Const. 1874; Vinsant, Adm'x v. Knox, 27 Ark. 266. Palmer v. State, 208 S.W. 436, 137 Ark. 160 (1919).

The section of the state Constitution cited by the Court (Art. 5, § 19) states: "The style of the laws of the State of Arkansas shall be: 'Be it enacted by the general assembly of the State of Arkansas'." The laws of the State are to bear this enacting style, otherwise they are not valid laws. The law in this case was missing this constitutional prerequisite of an enacting clause as printed in the statute book. (See Fig. 2). As such it carried no force and effect as a law. Thus laws, as they are taken or cited from statute books, which have no enacting clause cannot be used to charge someone with a public offense because they are not valid laws.

In a case in Kansas, a man was indicted for violating a law making it unlawful to print and circulate scandals, assignations, and immoral conduct of persons. He was arrested upon an indictment and applied for his discharge upon habeas corpus alleging that the act of the legislature was not properly published. The act had been published several weeks before the indictment, "which publication omitted an essential part of said act, to wit, the enacting clause." The Court held that the act was not properly and legally published at the time the indictment was found, thus the act was not in force at the time the indictment was brought against the petitioner. The Court also held:

ACT 200.

AN ACT for a tick eradication law in the counties of Howard, Pike, Little River, Clark, Miller and Lafayette counties.

SECTION 1. At the general election held in the State of Arkansas in the year 1916, at which the members of the Forty-first General Assembly of the State of Arkansas are to be voted for and every two years thereafter in each separate county until the tick eradication is adopted in that county, when the tick eradication law is adopted by a majority of the votes of any

ACT 277]

ACTS OF ARKANSAS.

1031.

ACT 277.

AN ACT making appropriation for the expenses of the executive and judicial departments of the State Government.

Be It Enacted by the General Assembly of the State of Arkansas:

SECTION 1. That the following named sums of money be, and the same are hereby appropriated for the object hereinafter expressed, for the fiscal years

Fig. 2 — Excerpt from, *Public and Private Acts of the State of Arkansas, 1915*. Act 200 (above) was published without an enacting style, and was thus declared to be a "nullity" in *Painier v. State*, 137 Ark. 160. Act 277 (below) from the same statute book displays an enacting style.

CHAPTER 68.

AN ACT to establish and regulate the maximum rate of charges for the transportation of passengers by corporations or companies operating or controlling railroads within the boundaries of this State in part or in whole.

§ 1. That it shall hereafter be unlawful for any common carrier earning as much or more than \$4,000.00 per year per mile gross, from all sources on its said road, and engaged in the carriage of

COMMONWEALTH OF KENTUCKY.

169

CHAPTER 65.

AN ACT to further regulate tobacco warehouse companies in the State of Kentucky.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ That on and after the first day of August, 1914, every individual, firm, company or corporation conducting a warehouse business in Kentucky where tobacco is sold at public auction, either prized in hogsheads or sold in the hands loose, shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his house daily. On or before the 5th day of each succeeding month the proprietor of the said warehouse shall make a statement under oath of all of the tobacco so sold

Fig. 3 — Excerpt from, *Acts of the General Assembly of the Commonwealth of Kentucky, 1914*. Chapter 68 (above) has no enacting clause and thus was pronounced "void" in *Commonwealth v. Harris Cent. R. Co.*, 160 Ky. 745. Chapter 65 (below) has an enacting clause.

The publication of an act of the legislature, omitting the enacting clause or any other essential part thereof, is no publication in law. The law not being in force when the indictment was found against the petitioner, nor when the acts complained of therein were done, the petitioner could not have been guilty of any crime under the provisions, and is therefore, so far as this indictment is concerned, entitled to his discharge. In re Swartz, 27 Pac. 839, 840, 47 Kan. 157 (1891).

There is no question involved here of whether an enacting clause was used on the bill in the legislature. The fact that the law was published without one was sufficient to render it void or invalid. Thus a publication of an act omitting the enacting clause is not a valid publication of the act. If the required statement of authority is not on the face of the law, it is not a law that has any force and effect. Such a published law cannot be used on indictments or complaints to charge persons with a crime for its violation. This decision was upheld and affirmed by the Court in 1981, when it said:

In [the case of] In re Swartz, Petitioner, 47 Kan. 157, 27 P. 839 (1891), this court found the act in question was invalid because it had been mistakenly published without an enacting clause. We again adhere to the dictates of that opinion. State v. Kearns, 623 P. 2d. 507, 509, 229 Kan. 207 (1981).

Thus whatever is published without an enacting clause is void, as it lacks the required evidence or statement of authority. Such a law lacks proof that it came from the authorized source spelled out in the constitution, and thus is not a valid publication to which the public is obligated to give credence.

In the law text, Ruling Case Law, is a section that deals with the requirements of statutes, and under the subheading, Publication of Statutes," it says:

The publication of a statute book without the enacting clause is no publication. Ruling Case Law, Vol. 25, "Statutes," § 133, p. 884; citing L.R.A. 1915B, p. 1065.

A publication of a statute book without the title and enacting clause on the laws therein is an incomplete or invalid publication, just like a publication of a book or magazine article is incomplete without the title and author's name, it is just a nameless body of words.

When a law in Kentucky was claimed to be void because it was found to have no enacting clause, the Court of Appeals of Kentucky read the entire law (Chapter 68) from the statute book and then said:

It will be noticed that the act does not contain an enacting clause. * * * The alleged act or law in question is unnamed; it shows no sign of authority; it carries with it no evidence that the General Assembly or any other lawmaking power is responsible or answerable for it. Commonwealth v. Illinois Cent. R. Co., 170 S.W. 171, 175, 160 Ky. 745 (1914).

The law was declared "void" because of the fact that the act appeared in the statute book without an enacting clause (See Fig. 3). Likewise, the alleged laws in the U.S. Code or the state Revised Statutes are "unnamed;" they show "no sign of authority" on their face, there is no evidence that they came from Congress or a State Legislature. The enacting clause has been deliberately removed from these "laws" and they thus are only nameless decrees without authority. The Supreme Court of South Carolina said that in order for bills to "have the force of law," they "must have an enacting clause showing the authority by which they are promulgated." Smith v. Jennings. 67 S.C. 324, 45 S.E. 821. 824 (1903). Thus the publication of a law must display its enacting authority.

The Kentucky case above was cited later by the same Court when it found that an enacting clause was missing from "chapter 129, p. 540, of the Session Acts" for 1934. Regarding this omission the Court said:

By oversight and mistake the constitutionally required enacting clause was omitted from the act, thereby rendering it illegal and invalid. Stickler v. Higgins, 106 S.W. 2d. 1008, 1009, 269 Ky. 260 (1937).

The law in question, which was to "consolidate the county offices of sheriff and jailer," was deemed to be "ineffectual" in accomplishing its objective because it was published without an enacting clause for some unknown reason (See Fig. 4).

In a case in Montana, the validity of a statute in its statute book (Chapter 199, Laws of 1937) was being questioned because it had a faulty or insufficient enacting clause. The State Supreme Court held the law invalid stating:

The measure comes before this court in the condition we find it in the duly authorized volume of the Session Laws of 1937, and in determining whether Chapter 199 is invalid or not we are confronted with the factual situation. It is entirely immaterial how the defective enacting clause happens to be a part of the measure. Vaughn & Ragsdale Co. v. State Board of Equalization, 96 P.2d. 420, 422 (Mont. 1939).

Here again the invalidity of the law, due to its "defective" enacting clause, was judged by its condition as it was published in the

CHAPTER 129.

AN ACT providing for the consolidation of the office of jailer with that of sheriff in each county of the State.

§ 1. The office of jailer is hereby consolidated with that of sheriff, in each county of the state, under the provisions of Section 105 of the Constitution. There are hereby transferred to and vested in the sheriff, all the powers and duties heretofore authorized by law to be exercised or performed by the jailer. Wherever in any law of the State, reference is made to the jailer, such reference shall be deemed to apply to the sheriff, except where the context requires otherwise.

CHAPTER 144

579

CHAPTER 144.

AN ACT to regulate, control and fix standard weights of wheat flour and the size of packages containing same; and to provide penalties for the violation of this Act.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Each package shall have the net weight printed or plainly marked on it.

Fig. 4.— Excerpt from, Acts of the General Assembly of the Commonwealth of Kentucky, 1934. Chapter 129 (above) was published with no enacting clause and was thus declared 'invalid' in Sticker v. Higgins, 269 Ky. 260. Chapter 144 (below), from the same statute book, shows the constitutionally required enacting clause.

CHAPTER 199

An Act Requiring Licenses for the Operation, Maintenance, Opening or Establishment of Stores in This State, the Classifying of Such Stores, Prescribing the License and Filing Fees to Be Paid Therefor and the Disposition Thereof, and the Powers and Duties of the State Board of Equalization in Connection Therewith; and Prescribing Penalties for the Violation Thereof and Repealing Sections 2420.1, 2420.2, 2420.3, 2420.4, 2420.5, 2420.6, 2420.7, 2420.8, 2420.9, 2420.10, 2420.11, Revised Codes of Montana, 1935.

Be It Enacted by the People of the State of Montana:

Section 1. That from and after the first day of January A. D. 1938, it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to open, establish, operate or maintain any

TWENTY-FIFTH LEGISLATIVE ASSEMBLY

CHAPTER 202

An Act Providing the Method for Computing Certain Deductions Allowable on Mine Taxes in the Production of Petroleum and Natural Gas in Montana.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The state board of equalization in computing the deductions allowable for expenditures under Section 2090 of the Revised Codes of the State of Montana on petroleum and natural gas production, shall compute and allow deductions for any such expenditures

Fig. 5.— Excerpt from, Laws, Regulations and Memorials of the State of Montana, 1937. Chapter 199 was published with the wrong enacting clause, and thus was held invalid by the State Supreme Court in the White Plains case, 105 Mont. 52. Chapter 202 (below) shows the proper style of an enacting clause for a law of the State.

statutes books of the State (See Fig. 5). The law had the enacting clause, "Be it enacted by the people of Montana." But this style was only to be used for measures initiated by the people. Laws passed by the Legislature were to have a different enacting clause — "Be it enacted by the Legislative Assembly of the State of Montana." As this was a legislative enactment, it was void for having the wrong enacting clause.

In North Carolina a legislative enactment for the incorporation of a town and the regulation of spirituous liquors therein was challenged because it had no enacting clause. The law was cited from the statute book as "Priv. Acts 1887, c. 113, § 8" (See Fig. 6). A man was indicted with the offense of selling spirituous liquors in the town and there was a verdict of guilty. On appeal the State Supreme Court said there was "error" in the judgment because the law charged against the man was void, stating:

In the case before us, what purports to be the statute in question has no enacting clause, and nothing appears as a substitute for it. * * * The constitution, in article 2, in prescribing how statutes shall be enacted, provides as follows:

"Sec. 23. The style of the acts shall be: 'The General Assembly of North Carolina do enact.'"

It thus appears that its framers, and the people who ratified it, deemed such provisions wise and important; the purpose being to require every legislative act of the legislature to purport and import upon its face to have been enacted by general assembly.

We are therefore of the opinion that the supposed statute in question has not been perfected; and is not such in contemplation of the constitution; that it is wholly inoperative and void. State v. Patterson, 4 S.E. 350, 352, 98 N.C. 660 (1887).

This alleged law could not be called a law pursuant to the constitution, because it existed in the statute books without an enacting clause on its face.

In a case in Louisiana, a law was claimed to be unconstitutional based on the fact that it had no enacting clause as it existed in statute book (See Fig. 7). The main evidence that the court used in holding the act unconstitutional was its status as found within the printed statute book.

The contention that the statute of 1944 is unconstitutional is based upon the fact that it contains no enacting clause. The State Constitution of 1921, in section 7 of Article 3, provides that:

1887.—PRIVATE—CHAPTER 112—113.

CHAPTER 112.

An act supplemental to an act to incorporate the town of Charleston in South Carolina.

The General Assembly of North Carolina do enact:

SECTION 1. That after the authorities of the town of Charleston shall have prepared suitable and convenient places for hitching horses, that hitching horses to gates and fences belonging to individuals in said town shall be construed a nuisance, and the authorities of said town are authorized to abate such nuisance, and are authorized to impose such fines and penalties as will abate them. Hogs running at large shall also be construed a nuisance.

SEC. 2. This act shall be in force from and after its ratification.

In the general assembly read three times, and ratified this the 7th day of March, A. D. 1887.

CHAPTER 113.

An act to incorporate the town of Forest Hill.

SECTION 1. That the town of Forest Hill, in Cabarrus county, be and the same is hereby incorporated, by the name and style of the town of Forest Hill, and it shall enjoy all the rights and privileges of incorporated towns and be subject to all the provisions of law now existing in reference to incorporated towns.

SEC. 2. That the corporate limits of said town shall be as follows: beginning opposite the old cotton mill on the line of Concord corporate line, and running north with said line fifty-three and one half degrees east one half mile to a stake, thence north forty-eight and one-half degrees west one half mile to a stake, thence south fifty-three and one-half degrees west one mile to a stone, thence north three and one half degrees east one half mile to a stone, thence north fifty-three and one-half degrees east to the beginning.

SEC. 3. That the officers of said town shall consist of a mayor, four commissioners and a constable, and the commissioners shall have power to elect a secretary and treasurer, and to elect the constable.

Fig. 6 — Excerpt from, *Laws and Resolutions of the State of North Carolina, 1887*. Chapter 113 (below) was published with the enacting clause, and thus was "void," *State v. Patterson*, 98 N.C. 660. The preceding law, Chapter 112, was published with an enacting clause.

ACT No. 303.

House Bill No. 872. By Mr. Fernandez, Chairman of Committee on Public Health and Quarantine (Substitute for House Bill No. 405 by Messrs. Fernandez and Landry).

AN ACT

To provide for the discovery and treatment of mental disorders; to define and interpret certain terms used herein; to designate institutions and places for mental patients; to provide for the examination, admission, commitment and detention of mental patients and their transfer, discharge, leave of absence, boarding out, return of escaped patients and interstate rendition and deportation; to provide for the assessment, imposition and collection of costs, fees and expenses incidental to carrying out the provisions of this Act; to grant certain rights to patients committed under this Act.

ARTICLE I.

Short Title, Interpretations and Definitions.

Section 1. Short Title: This Act shall be known as the Mental Health Act of 1944.

ACT No. 284.

House Bill No. 670. By Messrs. Martinez and Picciola.

AN ACT

To amend and re-enact the Title and Sections 1, 2 and 3 of Act 309 of 1938, entitled: "To create and establish a trades school for the education of white people of the State of Louisiana, in Thibodaux, Lafourche Parish, Louisiana, under the supervision of the State Board of Education, and to provide for the building, equipping and maintenance of said institution."

Section 1. Be it enacted by the Legislature of Louisiana, That the title of Act 309 of 1938 is hereby amended and re-enacted so as to read, as follows:

Fig. 7 — Excerpt from, *Acts Passed by the Legislature of the State of Louisiana, 1941*. Act 303 (above) was held "defective" as it had no enacting clause. *O'Rourke v. O'Rourke*, 69 So. 2d 567. Act 284 (below) has an enacting clause in Section 1 where the body of the law starts.

"The style of the laws of this State shall be: 'Be it enacted by the Legislature of Louisiana.'"

A mere glance at an official volume of the acts of 1944, discloses that the statute in question, Act 303 of 1944, contains no enacting clause nor any part thereof. * * * And from the fact that it does not appear in the printed volume of acts, we conclude that the act was originally and finally defective. O'Rourke v. O'Rourke, 69 So. 2d. 567, 572, 575 (La. App. 1954).

It could not be deduced exactly how the law came to be with no enacting clause. An examination of the original journal of the proceedings of each house could not disclose whether the enacting clause was present when the act was passed. The Court thus relied upon the status of the law in the printed statute book as proof of the overall status of the law. Thus the law was said to be "originally" defective because it was deduced that there was no enacting clause when the act was passed, and it was "finally" defective because it was printed in the volume of the acts without an enacting clause.

In a later case, this same court upheld this decision in declaring that a law was void because it too was recorded or printed in the statute books without an enacting clause:

[T]he state statute on which both plaintiff and the defendant rely cannot be given effect. What is reported in La. Acts 1968, Ex. Sess., as Act No. 24 is not law because it does not contain the enacting clause which La. Const. art. 3, § 7 requires to distinguish legislative action as law rather than mere resolution or some other act. Complete absence of the enacting clause renders the statute invalid. First Nat. Bank of Commerce, New Orleans v. Eaves, 282 So. 2d. 741, 743, 744 (La. App. 1973).

Again the invalidity of the law was deduced by the manner in which it was published (See Fig. 8). This decision raises another reason why the enacting clause must be printed in the public law book. It is so that citizens can identify it as a public law as opposed to a resolution, proclamation, executive order, or administrative rule. The enacting clause distinguishes a true public law from these other types of acts.

An enacting style of a law generally reads, "Be it enacted," while the style of a resolution usually reads, "Be it resolved," or "Resolved that." Most state constitutions make a distinction between a law and a resolution. The Constitution for the United States distinguishes a "resolution" and "order" from a "bill" which can "become a law (Art. 1, Sec. 7). They each go through the same basic formalities with respect to vote and procedure in Congress, but they are not the same thing.

ACT No. 21

Senate Bill No. 20.

By: Mr. Mouton.

AN ACT

To amend and reenact Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session, to provide with respect to teaching French and the culture of Louisiana in the public elementary and high schools in the state.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection A of Section 272 of Title 17 of the Louisiana Revised Statutes of 1950 as enacted by Act 408 of the 1968 Regular Session is hereby amended and reenacted to read as follows:

§ 272. French language and culture; teaching in public schools

A. The French language and the culture and history of French populations in Louisiana and elsewhere in the Americas shall be taught for a sequence of years in the public elementary and high school systems of the state, in accordance with the following general provisions:

(1) As expeditiously as possible but not later than the beginning of the 1972-1973 school year, all public elementary schools shall offer at least five years of French instruction starting with oral French in the first grade; except that any parish or city school board, upon request to the State Board of Education, shall be excluded from this requirement; and such request shall not be denied. Requests already received from school boards for exclusion from the provisions of Act 408 of 1968 shall also be valid for exclusion from the provisions of this Act unless individual school boards deem otherwise. School boards which have not already requested exclusion may do so at any time between July 1, 1971, and the beginning of the 1972-1973 school year. The fact that any board is excluded, as here provided, from participation in the program established by this section shall in no case be construed to prohibit such school board from offering and conducting French courses in the curriculum of the schools it administers. In any school where the program provided for herein has been adopted the parent or other person legally

Fig. 8 — An excerpt from Louisiana Acts 1968, Extra Session, 1968 (bound in Acts of the Legislature, Regular Session, 1968). Act 21 (Fig. 8) was declared to be null and void without effect because of the manner in which it was printed or reported in the statute book without an enabling clause. First Nat. Bank of Commerce, New Orleans v. Zaves, 282 So.2d 741. A preceding law, Act 21 (old), shows proper use of the enabling clause on the face of the law.

ACT No. 24

Senate Bill No. 27.

By: Messrs. Mouton and O'Keefe.

AN ACT

To regulate loans and advances of credit by banks under revolving loan plans, and to provide for interest and other charges thereunder; to provide for penalties; and to repeal all conflicting laws.

TITLE I - REVOLVING LOAN PLANS

Section 1. Definitions:

(a) The term "revolving loan" means an arrangement, including by means of a credit card, between a lender and a debtor pursuant to which it is contemplated or provided that the lender may from time to time make loans or advances to or for the account of the debtor (1) through the means of checks, drafts, items, invoices for the purchase of goods, orders for the payment of money, evidence of debt or similar written instruments or requests whether or not negotiable, endorsed or signed by the debtor or by any person authorized or permitted to do so on behalf of the debtor or (2) through the means of any other direction to pay by the debtor for loans or advances or charges to an account in respect of which account the lender is to render bills or statements to the debtor at regular intervals (hereinafter sometimes referred to as the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in such bill or statement or at the debtor's option may be payable by the debtor in installments.

(b) Credit cards - The term "credit card" as used herein means an identification card; credit number, credit device or other credit document issued to a person, firm or corporation by a lender which permits such persons, firm or corporation to purchase or obtain money, goods, property, or services on the credit of the issuer.

(c) "Lender" means a bank chartered or licensed by state or federal authorities and authorized to do business and doing business in this state.

Section 2. Revolving Loan Interest Charge, Separate Charge Statement

When we look at the "laws" in the United States Code," how do we know that they are public laws passed by Congress? For all we know they could be "mere resolutions," which carry no force and effect as laws. When we are charged with a violation of a law from the "Oregon Revised Statutes," how do we know that this is a law from the legislature of Oregon, as authorized by the Constitution of Oregon? There is no enacting clause on the face of the law to indicate whether it is law, a resolution, an order, or an administrative rule. What then is a resolution?

RESOLUTION. The term is usually employed to denote the adoption of a motion, the subject-matter of which would not properly constitute a statute; such as a mere expression of opinion; an alteration of the rules; a vote of thanks or of censure, etc. Black's Law Dictionary, 2nd. edition, p. 1027.

A resolution or order is not a law, but merely the form in which the legislative body expresses an opinion. Chicago & N.P.R. Co. v. City of Chicago, 51 N.E. 596, 598 (Ill. 1898).

The general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary. 73 American Jurisprudence, 2nd, "Statutes," § 3, p. 270; cases cited.

In Indiana, a joint resolution was passed for the appropriation of money, which used the enacting style: "Be it resolved by the General Assembly of the State of Indiana." The State Constitution allows for the appropriation of funds to be made only by law. The State Supreme Court said "the resolution is not law," as laws for the appropriation of money "cannot be enacted by joint resolution." May v. Rice, 91 Ind. Rep. 546 (1883).

That which is printed in the Revised Statute books and the U.S. Code could just as well be resolutions, which carry no force of law. If these statutes had enacting clauses, all would know what they were, the authority for their existence, and how they affect their rights and obligations. But they have no enacting clauses, and thus these publications are not legitimate publications in law which can be used to charge citizens with a crime. No enacting clause has been published with these "laws." They are only words of some committee, and thus are not constitutionally authorized laws which citizens are obligated to follow or obey.

So we must confront those in government who try to accuse us of violating a law published in some code, and ask them what is the authority for this law to exist? Where is its enacting authority on its

face that identifies it as a law of the legislature? A law exists not only in the manner in which it was enacted, but also in the manner in which it is promulgated or published. A law cannot validly exist in printed form without the constitutionally required enacting clause.

For the foregoing reasons but not expressly limited thereto, petitioner respectfully requests that this Honorable Court will issue ~~the~~ Petition For Writ of Habeas Corpus and immediately require respondent to respond thereto and/or order his release from his unlawful restraint.

DATED this 25th day of MAY, 2016.

Respectfully submitted,

Frank A. Walzmüller
PETITIONER/IN PRO-SE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of MAY, 2016, I caused to be mailed a true and correct copy of the foregoing ARGUMENT- ENACTING CLAUSES IN THE PUBLICATION OF STATUTE BOOKS by placing the same into a postage prepaid envelope and placing said envelope into the U.S. Mails, addressed to the following person(s):

DAVID C. Ponzona, CLERK
COURT OF APPEALS, DIV. II
950 BROADWAY, Suite 306
TACOMA, WA 98402 Frank Walzmüller

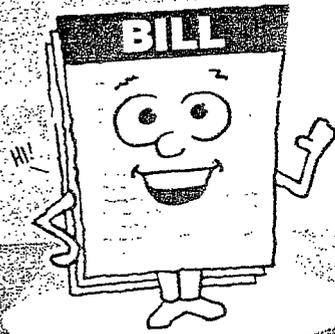
LISE ELLNER, ESQ.
ATTORNEY AT LAW
P.O. Box # 2711
WASHINGTON, WA, 98070

APPENDIX

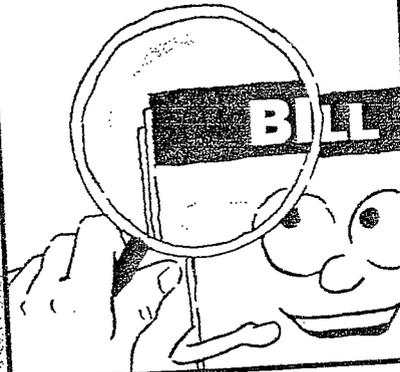
APPENDIX

How a Bill Becomes a Law

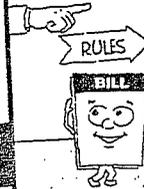
A BILL MAY BE INTRODUCED IN EITHER THE SENATE OR HOUSE OF REPRESENTATIVES.



A COMMITTEE STUDIES THE BILL AND OFTEN HOLDS PUBLIC HEARINGS ON IT.

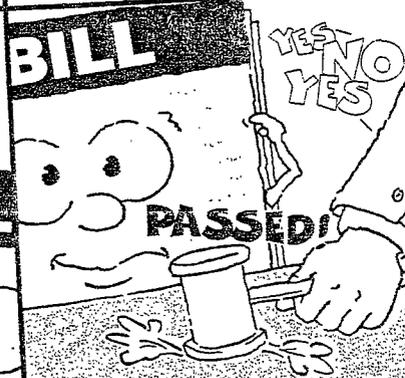
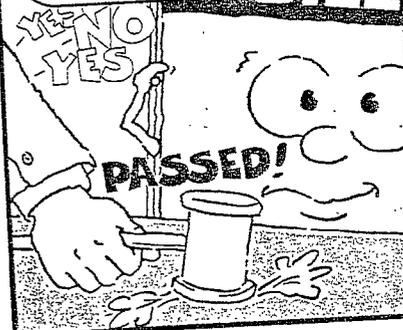


A COMMITTEE REPORT IS READ IN OPEN SESSION OF THE HOUSE OR SENATE, AND THE BILL IS THEN REFERRED TO THE RULES COMMITTEE.

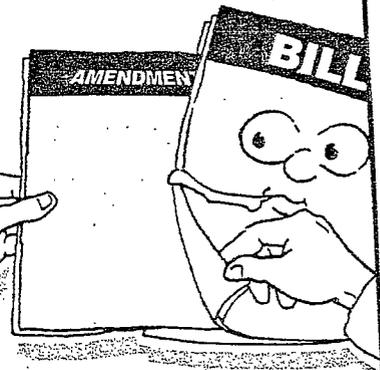


THE RULES COMMITTEE CAN EITHER PLACE THE BILL ON THE SECOND READING OF THE CALENDAR FOR DEBATE BEFORE THE ENTIRE BODY, OR TAKE NO ACTION.

AT THE SECOND READING A BILL IS SUBJECT TO DEBATE AND AMENDMENT BEFORE BEING PLACED ON THE THIRD READING CALENDAR FOR FINAL PASSAGE.

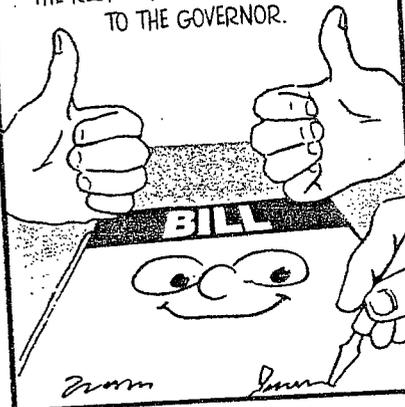


AFTER PASSING ONE HOUSE, THE BILL GOES THROUGH THE SAME PROCEDURE IN THE OTHER HOUSE.



IF AMENDMENTS ARE MADE IN ONE HOUSE, THE OTHER HOUSE MUST CONCUR.

WHEN THE BILL IS ACCEPTED IN BOTH HOUSES, IT IS SIGNED BY THE RESPECTIVE LEADERS AND SENT TO THE GOVERNOR.



THE GOVERNOR SIGNS THE BILL INTO LAW OR MAY VETO ALL OR PART OF IT. IF THE GOVERNOR FAILS TO ACT ON THE BILL, IT MAY BECOME LAW WITHOUT A SIGNATURE.

