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# THE NEW MEXICO STATUTES: OBSERVATIONS IN CONNECTION WITH THEIR MOST RECENT COMPILATION

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THE first formal collection of New Mexico laws, following the American occupation is the historically well-known Kearny Code prepared under direction of Brigadier General S. W. Kearny by Colonel A. W. Doniphan and Willard P. Hall, which was announced as the law for governing the Territory of New Mexico in a letter by General Kearny to the Adjutant General of the United States on September 22, 1846. The laws, as explained by General Kearny in his letter, were taken partly from the laws of Mexico theretofore in effect throughout the territory, partly from the laws of Missouri, and to a lesser extent from the laws of Texas, Coahuila and from the Livingston Code. A surprising proportion of the Kearny Code has survived, in reenacted form, the effect upon it of sixty-two territorial and state legislative sessions, as will be indicated by examination of the "Present status" annotations in a reprint of the Kearny Code in Volume One of the New Mexico Statutes 1941.

Following a preliminary legislative session in 1847, regular sessions of the territorial legislature were held annually from 1851 until 1869 inclusive, after which regular sessions took place biennially, more or less regularly until statehood. The territorial legislature of 1854 authorized a revision and correction of the laws, which was completed by Chief Justice James J. Deavenport of the territorial Supreme Court in 1856, and was known as the "Revised Statutes of the Territory of New Mexico." Another revision and compilation was authorized by the legislature in 1859 and a commission designated to perform the task, which reported back to the legislature in 1865. This compilation was declared by the legislature to be "The Revised Statutes

and Laws of the Territory of New Mexico . . . 1865." The territorial Supreme Court held later in the case of Tafoya v. Garcia, 1 N. M. 480, that this legislative declaration in 1865 had the effect of repealing all laws passed prior to this revision and that all acts contained in the Revised Statutes of 1865 were reenacted the same day.

Chief Justice L. Bradford Prince in 1880 prepared another revision of the general laws of the territory, but this compilation was never officially recognized by the Legislature. In 1884 a new compilation of the laws was authorized and three commissioners, Edward L. Bartlett, Charles W. Greene and Santiago Valdez, were designated to prepare and publish it, which was done in 1885. The last territorial compilation is that of 1897, upon authority of an act of March 16, 1897, and was prepared for publication by John P. Victory, Edward L. Bartlett and Thomas N. Wilkerson.

Since statehood, New Mexico had a codification of its laws in 1915, a compilation authorized by Laws 1929, ch. 135, and another compilation authorized by Laws 1941, ch. 191, which was scheduled for delivery to the state by the compilers during December, 1942. The publishers of the 1929 compilation also prepared and issued an unofficial supplement to the 1929 Compilation during 1938. Codifications and compilations of the law are distinguished, it should be noted, by the fact that laws as codified supersede the laws previously enacted whereas compilations merely bring related laws together, eliminating repealed and non-essential provisions, but do not otherwise change the wording of the original acts. When the laws are codified, the usual procedure followed by the legislature is to authorize codification at one session, designating codifiers to place the laws in proper arrangement, to eliminate obsolete provisions and antiquated laws and to reword or rewrite provisions which need redrafting. Then, at a subsequent session of the legislature the codification is adopted as one comprehensive act, repealing ordinarily as was done in 1915, all general laws not therein codified. An authorized compilation on

the other hand merely directs the compilers to bring together in a systematic arrangement all of the general laws still in force. The compilation is not subsequently adopted by the legislature, or does not need to be, since it does not embrace changes in wording, repeals nothing, and is but prima facie the law. The new 1941 New Mexico Statutes are the most completely annotated set of New Mexico statutes yet prepared. The comprehensive nature of the compilation is evidenced by the fact that the 1929 Compilation was published in one volume containing 2,068 pages, whereas, the 1941 Compilation is being published in six volumes, averaging approximately 1,500 pages each.

Perhaps the most interesting experiences in compiling a new set of statutes result from the discovery of humorous, sometimes ridiculous, errors that have perhaps inadvertently, perhaps designedly, crept into the laws. Some of the more interesting of these "errors" observed during preparation of the new 1941 compilation are being reviewed herewith.

The New Mexico Constitution provides that the subject of every bill shall be clearly expressed in its title and that a bill shall not embrace more than one subject (N. M. Const., art. 4, sec. 16). This provision, no doubt is an outgrowth of the elusive and deceitful practice indulged in during territorial days of slipping incongruous provisions into bills, which might not have been enacted if they had been openly presented upon their merits. Best known product of this territorial fraud is that contained in the act of February 2, 1860, entitled "An act to incorporate the Mesilla Mining Company" which provides in sections 1 and 3 for the incorporation as provided in the title. But section 2 of the act provides as follows:

> Be it further enacted: That it shall be lawful, valid and binding, to all intents and purposes, for those who may so desire, to solemnize the contract of matrimony by means of any ordained clergyman whatsoever, without regard to the sect to which he may belong, or by means of any civil magistrate.

This section quite obviously was thus hidden in the act to elude the vigilance of the Catholic clergy.

Even after statehood, however, attempts (usually held unconstitutional when contested in the courts) have been made to circumvent the constitutional requirement. Perhaps the best known of these attempts is the recent 1939 capitol building act which combined in its provisions authority for remodeling the capitol building and acquiring lands for state park purposes (Chap. 112, Laws 1939), held unconstitutional by the Supreme Court in Johnson v. Greiner, 44 N. M. 230, 101 Pac. 2d 183.

An interesting practice, not as yet presented before the courts, is illustrated by a 1933 act, Chapter 53, granting additional powers to the Cattle Sanitary Board. This act by its title and apparently also by an imperfectly worded repealing clause seeks to repeal a 1905 act prohibiting the holding of cattle roping exhibitions. The title and text of the act mention only the numbers of sections being repealed, leaving the assumption in the minds of persons reading them that these sections represent limitations upon the powers of the Cattle Sanitary Board sought to be removed, whereas in fact they are not germane to the principal subject of the act. The subterfuge is obvious. By not mentioning the subject matter of the acts sought to be repealed either in the title or in the body of the act, the legislature eluded the vigilance of the S. P. C. A. and kindred organizations.

There is a 1923 act which bears this vague title: "An act for the preservation of public peace in the State of New Mexico." (Chap. 4, Laws of 1923). A reading of the act itself reveals that it seeks to prohibit wearing of masks, hoods, robes or other covering upon the face, head or body —directed against and intended to disrobe the hooded gentry of that day, the Ku Klux Klan.

Stenographers in typing the enrolled bills have made mistakes which have slipped by and remained uncorrected by certificate. The acts therefore appear upon the books in a form not intended by the legislature. Under our Supreme

Court decisions the courts will not go behind the enrolled and engrossed bills. Of most common occurrence are instances in which a small word such as "not" is omitted, making mandatory acts intended to be prohibitive. Fortunately, the title in these cases and perhaps other provisions in the act ordinarily make it more or less apparent that such declaration does not express the true intent of the lawmakers and the courts have recognized the value in such cases of the title and other sections as aids in interpreting the true meaning of the law. Sometimes a word is inserted instead of being left out. This may provide incongruous and humorous results. A provision in sec. 10, ch. 94, Laws 1921, for example, provides that it shall be unlawful to operate, haul or conduct over any public highway or street any vehicle of certain descriptions without a permit which specifies a method of operation which will *not* prevent as far as possible inconvenience and danger to the traveling public and damage to the surface.

Though persistent efforts are made during most sessions of the legislature to eliminate them, many acts as enacted carry provisions in direct conflict with the constitution. One of the most frequently violated provisions is that portion of art. 12, sec. 4 of the New Mexico constitution which provides that "All fines and forfeitures collected under general laws . . . shall constitute the current school fund of the state." The 1921 act above mentioned, for example, provides that fines for violation of the act shall be placed to the credit of a fund for the construction and improvement of roads and streets.

Some laws as passed are meaningless, misleading, or have been sheared of vital provisions sought to be enacted. A 1929 act, for example, providing for assignment of wages and salaries, says that the assignment in order to be valid shall be acknowledged by the party making the assignment and that if the person making such assignment is married and living with his wife, the assignment shall be recorded in the office of the county clerk. Does this mean that if a

person is not married or if he is married but is not living with his wife the requirement is waived? That, apparently, is what the statute implies. A bit of research here, however, reveals that as introduced this act told a quite different story. In the process of enactment a clause which read "such assignment shall also be signed and acknowledged by the wife, and" was omitted following the phrase "living with his wife." The legislator who introduced the bill, however, intended to provide that if a person making the assignment is married and living with his wife the assignment should be valid only if it were also signed and acknowledged by his spouse.

The 1931 legislature in chapter 105 of the laws enacted that year provided for investigation of the affairs of certain fraternal benefit societies in the state by the superintendent of insurance, and included in the enactment statement a section which prohibits the superintendent from making public any financial statement or report of his findings until "a copy thereof shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding, and to make such showing in connection therewith as it may desire." What the legislature intended, most likely, was to give the society involved an opportunity to explain, rather than to impart life to the report.

A humorous touch is added by some. This same 1931 act, mentioned in the preceding paragraph, in enumerating the societies affected designated one of them the "Nights of Pythias." An act creating a state board provides that certain state officials shall serve as ex-officio members, then adds that, in addition the governor shall appoint two *reputable* citizens to the board.

The New Mexico constitution provides that no act can be amended or its provisions extended by reference to its title but that each section thereof as revised, amended or extended shall be set out in full. This provision has created considerable legislative difficulty. On numerous occasions when sections are long and involved, only the particular

paragraph or subsection amended has been set out in full. Legality of this practice has not been tested, but is extremely questionable. Sometimes, the legislature in its desire to comply with the Constitutional provision, on the other hand, has followed the mandate so closely as to lead to queer and ludicrous results. The 1941 legislature, for instance, in amending an earlier law, creating a state board of health, provided that "As soon as possible after the enactment and approval of this act (i.e., the 1941 act) the governor shall appoint one member whose term shall expire on January 1, *1939*, two members whose terms shall expire on *January 1, 1941*, and two members whose terms shall expire on January 1, 1943." Obviously the new appointment of the first three members must have been quite perfunctory inasmuch as their terms expired well before the bill was introduced. (Laws 1941, ch. 54, sec. 1)

Inadvertent repetition of words or phrases sometimes changes the meaning of our statutes. The 1937 legislature in an act relating to fidelity and surety insurance probably intended to provide that indemnity would not apply against the loss of certain designated commercial paper while in the mail or in the custody or possession of a carrier for hire for the purpose of transportation, except when being transported by an armored motor vehicle accompanied by one or more guards. As enacted, however, the law calls for "transportation by an armored motor vehicle *accompanied by an armored motor vehicle* accompanied by one or more armed guards." In other words, the armored car which transports the commercial paper, and the other items intended to be covered by the act, must be accompanied by a second armored car and one or more armed guards.

Failure to observe technical constitutional requirements may easily cause very serious complications. An act passed with a two-thirds majority or over, carrying an emergency clause, becomes effective under wording of the customary emergency clause upon its passage by the legislature and approval by the governor. The Constitution provides in art.

4, sec. 22 that "Any bill not returned by the governor within three days, Sunday excepted, after being presented to him, shall become a law, whether signed by him or not, unless the legislature by adjournment prevent such return. Every bill presented to the governor during the last three days of the session shall be approved or disapproved by him within six days after the adjournment and shall be by him immediately deposited with the secretary of state. Unless so approved and signed by him such bill shall not become a law." The 1931 legislature enacted a measure providing a "Guaranty Fund" to insure prompt payment of principal and interest upon conservancy district bonds theretofore issued, also providing for a tax levy for the purpose. During preparation of the 1941 Compilation it was noted that this bill was not signed by the governor and did not reach him in its final form until one day before adjournment of the legislative session. Under a strict interpretation of the emergency clause this bill could not have become law under any circumstances and under the Constitution it could not become law unless by some tenuous interpretation the time could be held countable from a previous day on which it had been sent to the governor, but after which it had been recalled for alteration and amendment.

Compilation of the statutes has many advantages aside from convenience and greater accessibility of the law. Not least among these is the opportunity it affords to discover defects in our legislation which need to be corrected.