OPINION 6

OFFICIAL OPINION NO. 6

March 23, 1971

Hon. Richard C. Bodine
Member of the Indiana House of Representatives

Hon. Frederick T. Bauer
Member of the Indiana House of Representatives

Hon. Richard J. Lesniak
Member of the Indiana House of Representatives
Indianapolis, Indiana

Gentlemen:

You have requested an Official Opinion as to the legal effect of four Engrossed House Bills currently under consideration by the Indiana General Assembly.

QUESTION

The question you present is as follows:

> "What is the legal effect of Engrossed House Bills, numbered 1288, 1290, 1820 and 1633, if passed in violation of Rule 38 of the Standing Rules and Orders of the Indiana House of Representatives?"

You are questioning House Rule 38, which stated:

> "No motion or proposition for a tax or charge upon the people shall be discussed the day on which it is made or offered, and every bill for such purpose shall receive its first discussion in the Committee of the Whole."

This rule of the Indiana House of Representatives is based on Jefferson's Manual of Rules as construed by the National House of Representatives (Rule 23, section 3) which reads as follows:

> "All motions or propositions involving a tax or charge upon the people, all proceedings touching appropriations of money, or bills making appropriations of

money a property, or requiring such appropriations to be made, or authorizing payment out of appropriations already made, or releasing any liability to the United States for money or property, or referring any claim to the Court of Claims, shall be first considered in a Committee of the Whole, and a point of order under this rule shall be good at any time before the consideration of the bill has commenced."

ANALYSIS

I cannot give an Official Opinion as to the precise legal effects of inchoate legislation.

However, with reference to the subject in general, the question you submitted is really a matter of first impression in the State of Indiana in view of the factual circumstances.

It is your contention that the engrossed bills to which you refer were passed out of the Ways and Means Committee of the Indiana House of Representatives directly to the floor of the House without at any time being considered by the Committee of the Whole House. One of the things which the House itself would have to consider would be whether or not a point of order was raised before consideration of the bill as required in Jefferson's Manual of Rules cited above.

To continue the general discussion, there have been numerous cases which have dealt with the legal effect of a statute which had already been passed by both houses of the General Assembly and signed into law by the Governor. It has usually been decided in those cases that this is an area in which the courts say they will not intervene.

The Constitution of Indiana, Art. 3, Sec. 1, provides that:

"The powers of the government are divided into three separate departments: The Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in the Constitution expressly provided."

In Evans, Auditor of State, v. Browne, (1869), 30 Ind. 514, the Indiana Supreme Court was asked to nullify an act of the Indiana General Assembly because of an alleged lack of a constitutional quorum. The Supreme Court refused to rule on the issue stating:

> "Courts should be very careful not to invade the authority of the legislature. Nor shall anxiety to maintain the constitution, laudable as that must ever be esteemed, lessen their caution in that particular; for if they overstep the authority which belongs to them, and assume that which pertains to the legislature, they violate the very constitution which they thereby seek to preserve and maintain. No person charged with official duties under the judicial department shall exercise any of the functions of the legislative department."

Since the decision in Evans, Auditor of State, v. Browne, *supra*, the courts have consistently held that a proper authentication of an enrolled act is conclusive, as a matter of law, that the act was passed in conformity with the constitution, and the courts will not look beyond the act. The logic behind this self-imposed restriction was stated in Lucas v. McAfee, (1940) 217 Ind. 534, 29 N.E. (2d) 588, in reference to the separation of powers:

> "The right is deemed essential to the enactment of legislation without interruption and confusion and to maintain a proper balance of authority where the functions of government are divided between coordinate branches. It is no more subject to judicial interference or control than the judicial functions of this court are subject to the dictates of the legislative or executive departments. *The Constitution has defined a domain upon which courts may not tread.*" (My emphasis)

The courts' reluctance to interfere with the internal functions of the Legislature is due to the fact that these functions can be changed by the Legislature itself at its own discretion. The Indiana Constitution in Art. 4, Sec. 10, gives the Legislature the right to promulgate its own internal rules:

> "Each house, when assembled, shall * * * determine its rules of proceeding, and sit upon its own adjournment * * *"

Given this Constitutional right, the House of Representatives has established its own procedure for changing a standing rule. In Rule 88 of the Standing Rules and Orders (Regular Revised 1971), this procedure is described as follows:

> "Any standing rule or order of the House or order of business may be rescinded, changed, or suspended without previous notice, and a motion for such purpose shall be in order at any time. It shall have precedence over all other business. The motion must be seconded by a constitutional majority and must be carried by two-thirds vote of the members of the House."

Under our form of government, it is essential that the three separate branches of government recognize the sphere of authority enjoyed by the others. The court has recognized the limiting aspects of the separation of powers. In State *ex rel* Black v. Burch, (1948), 226 Ind. 445, 80 N.E. (2d) 560, the Indiana Supreme Court quoted from O'Donoghue v. United States, (1933), 289 U. S. 516, as follows:

> "The Constitution in distributing the powers of government, creates three distinct and separate departments—the legislative, the executive, and the judicial. This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital * * * namely, to preclude a commingling of these essentially different powers of government in the same hands.
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> "If it be important thus to separate the several departments of government and restrict them to the exercise of their appointed powers, it follows, as a logical corollary, equally important, that each department should be kept completely independent of the others—independent not in the sense that they shall not cooperate to the common end of carrying into

effect the purposes of the Constitution, *but in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to the influence of either of the other departments.*" (My emphasis)

CONCLUSION

It is my official opinion, therefore, that the office of the Attorney General, being a part of the executive branch of government, does not have the authority to construe the legal effect of an engrossed bill that is presently being considered. In addition, case authority is almost non-existent to show any willingness on the part of the courts to question the internal operation of the Legislature. The Constitution gives the Legislative Branch of government the power to determine its own rules of procedure, and the power to enforce them, and the remedies when there is a question of their not being properly enforced. With this power comes a concomitant responsibility to construe its rules on a fair and equitable basis without regard to personal preference or political expediency. When this is done, the Indiana Constitution, Art. 3, Sec. 1, serves its intended purpose. Acting as I am within that same constitutional provision, I cannot go beyond this in giving an official opinion as to the legal effect of the internal procedural matter about which you have complained in your inquiry.