Michigan Law Review

Volume 46 | Issue 7

1948

EVIDENCE- STATUTES - CONTRADICTION OF LEGISLATIVE JOURNAL ENTRY TO SHOW DATE OF RECEIPT OF BILL BY GOVERNOR

Emerson T. Chandler
University of Michigan Law School

EVIDENCE — STATUTES — CONTRADICTION OF LEGISLATIVE JOURNAL ENTRY TO SHOW DATE OF RECEIPT OF BILL BY GOVERNOR—Plaintiff, a tax assessor, sought to recover salary claims against a county, contending that compensation was payable under an act [1] passed by the General Assembly but vetoed by the governor. An entry in the House journal [2] reported delivery of the bill to the governor on March 5. The Assembly adjourned March 13, and the governor vetoed the bill March 28. An official receipt dated March 10 had been given for the bill by the governor's office. The Arkansas Constitution [3] gives the governor five days within which to approve or disapprove the bill. If he fails to act, the bill becomes law unless adjournment of the Assembly prevents its return within the five days. In that case the constitution allows the governor twenty days from the date of adjournment to approve or disapprove. Plaintiff contended that the date shown in the journal entry was conclusive. *Held*, judgment disallowing claims affirmed. The constitutional requirement that all bills be sent to the governor impliedly authorizes him to give evidence of receipt in a reasonable manner. An official receipt, therefore, should be given the same weight as a House journal entry, and since records of equal dignity conflict as to the date of delivery, the governor's act in vetoing must be presumed to be within the constitutional requirements. *Whaley v. Independence County*, (Ark. 1947) 205 S.W. (2d) 861.

Under the so-called "enrolled bill" rule, legislative journals may not be used to impeach the contents or enactment of the duly enrolled bill; [4] but a substantial minority of courts allow such impeachment under the "journal entry" rule.[5] The journals themselves are generally given conclusive weight as to matters which are constitutionally required to be entered therein; [6] journal

[1] Ark. Acts (1947) No. 430.

[2] Journal is kept under authority of Ark. Const. (1874) Art. 5, § 12. There is no express provision that date of delivery of a bill to the governor be entered in the journal.

[3] Ark. Const. (1874) Art. 6, § 15.

[4] 4 WIGMORE, EVIDENCE, 3d ed., § 1350 (1940); 119 A.L.R. 460 (1939).

[5] Ibid.

[6] Integration of Bar Case, 244 Wis. 8, 11 N.W. (2d) 604 (1943). Silence of the journal in respect to a matter constitutionally required to be entered may be conclusive. State v. Helseth, 104 Fla. 208, 140 S. 655 (1932); Ex parte Hague, 104 N.J. Eq. 31, 144 A. 546 (1929). But silence on some matter constitutionally required to be done in enactment, but not required to be entered in the journal is held generally insufficient to impeach enrolled bill. Young v. Galloway, 177 Ore. 617, 164 P. (2d) 427 (1945); Smith v. Robertson, 155 Kan. 706, 128 P. (2d) 260 (1942).

entries, whether mandatory or not, may not be impeached by extrinsic evidence.[7] Approval or disapproval of the governor shown on the enrolled bill would be conclusive in an "enrolled bill" jurisdiction,[8] but could be impeached in a "journal entry" rule state such as Arkansas.[9] Where the governor's veto is not in accordanace with constitutional requirements, it is clearly ineffective.[10] Until this affirmatively appears, however, his act in vetoing the bill has presumptive validity.[11] Inasmuch as a journal entry may overcome the presumption of validity of an enrolled bill under the "journal entry" rule, it follows that such an entry may affirmatively show the governor's veto ineffective and thereby overcome any such presumption attaching to the governor's act. On the other hand, where the constitution requires an act to be done but does not require its entry in the journal, there is no good reason for holding the journal entry conclusive [12] against other record evidence not provided for in the constitution, particularly where such other evidence may be more reliable.[13] The Arkansas court wisely gives the official receipt of the governor's office equal weight.[14] Since journals are not always kept in a manner insuring a high degree of reliability,[15] the result here reached would appear sound in spite of the court's questionable inference that the framers of the constitution could not have in-

[7] 4 WIGMORE, EVIDENCE, 3d ed., § 1350 at p. 683 (1940); 31 C.J.S., Evidence, § 43 at p. 609 (1942).

[8] Bloomfield v. Board of Freeholders, 74 N.J.L. 261, 65 A. 890 (1907) (approval); Weeks v. Smith, 81 Me. 538, 18 A. 325 (1889) (disapproval).

[9] Bush v. Martineau, 174 Ark. 214, 295 S.W. 9 (1927); Rice v. Lonoke-Cabot Road Improvement District No. 11, 142 Ark. 454, 221 S.W. 179 (1920).

[10] 119 A.L.R. 1189 (1939).

[11] Texas Co. v. State of Arizona, 31 Ariz. 485, 254 P. 1060 (1927). Cleveland v. Martin, (La. 1947) 29 S. (2d) 516.

[12] In some jurisdictions, a journal entry is held entitled to absolute verity and cannot be impeached even for mistake or fraud. State v. Dixie Finance Co., 152 Tenn. 306, 278 S.W. 59 (1925). Where the constitution required the journal to show presentation to the governor on same day it passed, it was held merely directory in State v. Meade, 71 Mo. 266 (1879).

[13] In the principal case the court excluded oral testimony of delivery on March 10, the date of the receipt.

[14] A governor's veto was upheld by consulting a journal clerk's memorandum in United States v. Allen, (C.C. Mo. 1888) 36 F. 174. Courts have held that records of the secretary of state's office showing date of adjournment may not be impeached by legislative journals: Territory ex rel. Haller v. Clayton, 5 Utah 598, 18 P. 628 (1888); and that a record of presentation required by law to be kept in the governor's office is sufficient to prove presentation: Wrede v. Richardson, 77 Ohio St. 182, 82 N.E. 1072 (1907). In a recent case it was held that failure to observe constitutional requirement of indorsing time of presentation of bill will not affect presumptive validity of governor's veto. Cleveland v. Martin, (La. 1947) 29 S. (2d) 516. Records of secretary of state were given weight in Lankford v. Somerset County, 73 Md. 105, 20 A. 1017 (1890), but a memorandum of the governor's secretary was held to be of no weight in State ex rel. Crenshaw v. Joseph, 175 Ala. 579, 57 S. 942 (1911).

[15] See Nutting, "The Enrolled Bill and the Validity of Legislation," 15 NEB. L. BUL. 233 at 234, 241, 244 (1937), and State v. Frank, 60 Neb. 327, 83 N.W. 74 (1900).

tended journal entries to outweigh records of a co-equal branch of the government, when in fact the constitution expressly provides for an official journal, but not for the governor's receipt.

Emerson T. Chandler