

GENERAL ASSEMBLY—TEXTUAL DISCREPANCY—SENATE AND HOUSE JOURNAL; ENROLLED BILL FILED WITH SECRETARY OF STATE—AUTHENTICATED AND FILED BILL CONTROLS—955.29 RC.

SYLLABUS:

Where there is a discrepancy between the language of an enactment as it appears in the enrolled bill, authenticated and filed in the office of the Secretary of State, and the language of the bill as it appears from an inspection of the journals of the Senate and House, the law is as it is worded in the authenticated and filed enrolled bill. The provisions of Section 955.29, Revised Code, must thus be deemed applicable to "domestic rabbits" despite the attempt of the 101st General Assembly to delete these words.

Columbus, Ohio, April 10, 1957

Mr. Robert M. Daniel, Acting Prosecuting Attorney  
Morgan County, McConnelsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Commissioners have been presented with claims for rabbits killed by dogs. The claim being presented to the Commissioners under Section 955.29 and Section 955.30 of the Revised Code of Ohio. I have been unable to determine if domestic rabbits raised for the production of meat would be considered poultry under the above section, or if the claims for the killing of these animals should be honored. The claims seem to have been made in compliance with the statute otherwise."

Section 955.29, Revised Code, was amended effective October 6, 1955, to include claims for "domestic rabbits" killed by dogs. 126 Ohio Laws, 940:

"Any owner of horses, sheep, cattle, swine, mules, goats, *domestic rabbits*, and domestic fowls or poultry, having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to such owner or harbored on his premises, in order to be entitled to enter a claim for damages must notify a member of the board of county commissioners or dog warden in person or by registered mail, within forty-eight hours after such loss or injury has been discovered, and if a

member was notified he shall immediately notify the dog warden or other enforcing officer of such loss or injury. Such warden or officer shall have the facts of such loss or injury investigated at once. Such warden or officer shall not place a value, take affidavits as to value, or influence any appraisal made on any animal killed or injured by such dog. \* \* \*” (Emphasis added)

The words “domestic rabbits” were also inserted in the section after the word “goats” in the other two instances where the kinds of animals for which claims can be made, are listed.

Your question assumes the invalidity of this amendment. An inspection of the Senate and House Journals discloses that the bill as originally introduced in the House, H. B. No. 632, did not contain the words “domestic rabbits.” The Senate subsequently amended the bill to include “domestic rabbits” but the House refused to accept this amendment. A conference committee was appointed. It reported recommending the bill without the words “domestic rabbits.” This recommendation was adopted—126 Senate Journal, 827; 126 House Journal, 1511. However, the enrolled bill signed by the Speaker and the President of the Senate in the presence of their respective houses of the legislature, and approved by the Governor and filed with the Secretary of State, contains the words “domestic rabbits.” 126 Ohio Laws, 940.

There is, therefore, a variance between the bill that passed the House and Senate and the bill signed by the President of the Senate and the Speaker of the House, approved by the Governor and filed with the Secretary of State.

The Constitution of Ohio, 1851, provides:

*Article II, Section 6:*

“Each house shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either house, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed in either house, without the concurrence of a majority of all the members elected thereto.”

*Article II, Section 16:*

“\* \* \* Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves he shall sign it and thereupon it shall become a law and be filed with the secretary of state. \* \* \*”

*Article II, Section 17:*

“The presiding officer of each house shall sign, publicly in the presence of the house over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the general assembly.”

In *Ritzman v. Campbell, et al.*, 93 Ohio St., 246, there was a similar discrepancy. The words “boards and commissions” appeared in the enrolled bill when the journals indicated “bureaus” should have appeared. The court stated the constitutional provision requiring the concurrence of a majority of all the members elected to each house was a mandatory one and failure to follow it would invalidate an act. The court, however, indicated it will not invalidate an act because of discrepancies between the journals and the enrolled bill and that the language of the enrolled bill prevails.

Paragraph two of the syllabus provides as follows :

“2. Such enrolled bill, so authenticated, is conclusive upon the courts as to the contents thereof, since the attestation of the presiding officers of the general assembly is a solemn declaration of a coordinate branch of the state government that the bill as enrolled was duly enacted by the legislature.”

The court stated in its opinion :

“\* \* \* The court, however, will not extend the matter of the inspection of the legislative journals to the extent asked in the instant case for the purpose of establishing the fact that a discrepancy of a material nature exists between the enrolled bill so duly authenticated and approved and the bill as it might appear to be on such inspection of the journals. P. 261.

The court concluded :

“Meanwhile an enrolled bill bearing the solemn attestation that it was signed by the presiding officers of each house, while the same was in session and capable of doing business, and which thereafter was presented to and signed by the governor and by him filed with the secretary of state, must, if the legislative journals show it to have received the necessary constitutional majority, be considered *to be what it purports to be*, and not under any circumstances subject to impeachment as to its contents or the mode of its passage.” P. 263.

See also Opinion No. 1436, Opinions of the Attorney General for 1937, page 2392.

Accordingly, it is my view that although there may be a variance between the wording in Amended H. B. No. 632, as indicated by the Senate and House Journals, and as it appears in the enrolled bill filed with the Secretary of State's office, the law is as it appears on the authenticated bill filed in the office of the Secretary of State. Therefore, claims for the killing of "domestic rabbits" made pursuant to Section 955.29, *et seq.*, Revised Code, should be honored by the county commissioners.

In specific answer to your inquiry, therefore, it is my opinion that where there is a discrepancy between the language of an enactment as it appears in the enrolled bill, authenticated and filed in the office of the Secretary of State, and the language of the bill as it appears from an inspection of the journals of the Senate and House, the law is as it is worded in the authenticated and filed enrolled bill. The provisions of Section 955.29, Revised Code, must thus be deemed applicable to "domestic rabbits" despite the attempt of the 101st General Assembly to delete these words.

Respectfully,  
WILLIAM SAXBE  
Attorney General