

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 . . ." They do not say "all bills shall . . ." The terms "bill" and "law" are clearly distinguished from one another in most constitutions in prescribing the procedure of the 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 or draft of a law presented to a legislature. "A bill does not become a law until the constitutional prerequisites have been met."¹ Thus a bill is something that becomes a law. Laws do not exist in the legislature, rather only bills do. Laws 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.²

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."³ 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

1 *State v. Naftalin*, 74 N.W.2d 249, 261, 246 Minn. 181 (1956).

2 *Vaughn & Ragsdale Co. v. State Bd. of Eq.*, 96 P.2d 420, 423 (1939).

3 *Black's Law Dictionary*, 2d edition, p. 826.