

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

January 20, 1958

To L. C. Fortier, Chairman, Maine Employment Security Commission

Re: Date of Enactment

You have asked this office for an opinion relative to the "date of enactment" of Chapter 150, Private and Special Laws of Maine, 1957.

Chapter 150, entitled An Act Relating to Construction of a Building for Maine Employment Security Commission, authorizes the Commission to requisition from the unemployment trust fund \$600,000, and said sum was appropriated for the purpose of acquiring land and constructing a building to be used by the Commission.

The Federal Department of Labor states that the "date of enactment" of Chapter 150 is important to that Department in carrying out the terms of the Federal Reed Act with respect to expenditures made under their act.

It is our opinion that the "date of enactment" of Chapter 150, Private and Special Laws of 1957, was August 28, 1957.

Prior to January 1, 1909, the Constitution of Maine had no provision relating to initiative and referendum procedures with respect to acts, bills, or resolves passed by the Legislature.

Thus, prior to 1909, the "date of enactment" of such acts, bills, or resolves, having the force of law, would have been the date such acts, bills and resolves were approved by the Governor, at which time the acts went into effect.

At that time our court said:

"The last legislative act is the approval of the governor. When approved and not till then they become existing acts. . . . The approval of the governor was the last legislative act which breathed the breath of life into these statutes and made them a part of the laws of the State. . . ."

Stuart v. Chapman, 104 Me. 17

See also the language of the court in Opinion of the Justices, 120 Me. 566, which indicates that a bill, passed as an emergency measure, is enacted upon approval by the Governor.

However, Article XXXI of the Constitution, proposed by Chapter 121, Resolves, 1907, became effective as an Amendment on January 1, 1909. This Article contains the provisions relating to optional referendum and direct initiative by petition.

This Constitutional Amendment made a fundamental change in the existing form of government in so far as legislative power was involved. *Farris v. Goss*, 143 Me. 227.

Before the Amendment the style of acts and laws was:

"Be it enacted by the Senate and House of Representatives in Legislature assembled."

It thus appears that the Legislature could then enact legislation, the last legislative act being, as stated above, the approval of the legislation by the Governor. The Amendment, however, provided that after its adoption the style of acts and laws should be:

"Be it enacted by the People of the State of Maine."

By the Amendment, it is clear that the people were reserving to themselves the right to propose laws and to enact or reject laws at the polls, and also to reserve the power to approve or reject any act, bill, resolve or resolution passed by the Legislature.

Article IV, Part First, Section 1, Maine Constitution, reads as follows:

“The legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be, ‘Be it enacted by the people of the state of Maine.’”

In order to protect this right, Article IV, Part Third, Section 16, of the Constitution now provides:

“No act or joint resolution of the legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency, (which with the facts constituting the emergency shall be expressed in the preamble of the act), the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.”

From the cases and constitutional provisions considered in the above, it appears that, since the constitutional amendment of 1909, it is not the approval of the Governor that is the final legislative act which “breathes the breath of life into the statutes,” but rather the expiration of the ninety days after the recess of the Legislature passing it (except in cases of emergency. For language indicating that a bill passed as an emergency measure is enacted upon approval of the Governor, see Opinion of the Justices, 120 Me. 566.)

As stated in *State v. Gibbons*, 118 Wash. 171, 177.

“When the people or body possessing such legislative power have completely exercised their power in bringing the law into existence, the enactment of the law has become complete.”

Not until the ninety days expire without a referendum being invoked does the act become law. Not until expiration of the ninety days has that final condition been complied with which results in “enactment” of the law.

Chapter 150, Private and Special Laws of 1957, not being an emergency measure, became effective, and was enacted, on August 28, 1957.

JAMES GLYNN FROST
Deputy Attorney General