

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State . . . has sponsored in this instance."

We trust this interpretation will answer the basic question of the validity of the Maine law and serve as somewhat of a guide in advising school officials at the local level.

Very truly yours,

FRANK E. HANCOCK

Attorney General

June 26, 1963

Steven D. Shaw, Administrative Assistant
State House
Augusta, Maine

Dear Steve:

You have asked, "1. Whether or not after the adjournment of the Legislature it is the Governor's prerogative to review the pending legislation without time limitation until the next meeting of the Legislature, or do the Resolves and Acts become law notwithstanding his signature, after expiration of the time limitation of five days, as set forth in Section 2 referred to above."

We answer your first question in the negative. It is our opinion that the Governor must sign those Bills and Resolves, presented to him after adjournment of the legislature, within 5 days after that presentation. If he does not do so, then those Bills and Resolves left unsigned shall have the force and effect as if he had signed them, unless returned within 3 days after the next meeting of the legislature. (Maine Constitution Article IV, Part Third, Section 2.)

" . . . (W)hen there is no expressed constitutional provision, most jurisdictions had held that the Executive may approve a bill after adjournment if he does so within the time specified for failure to return." *Volume 1, Southerland Statutory Construction*, Section 1505.

In reference to similar wording as our own Constitution, Professor Alonzo H. Tuttle said in the *Ohio State University Law Journal*, Volume 3, No. 3, June, 1937:

"Many courts . . . have construed these clauses as still giving the Executive the power to sign bills after such adjournment, but only by analogy within the time provided for such signing while the legislature is in session.

We interpret section 2 as follows:

If a Bill or Resolve is passed by both houses of the legislature it becomes law,

(1) When approved and signed by the Governor within 5 days of presentation to him.

(2) When the legislature being in session, the Governor fails to sign such Bill or Resolve within the 5 days after presentation.

(3) When after being returned to the legislature within the 5 days it is passed by the requisite majorities over his objections.

(4) When, if the session of the legislature terminates by an adjournment before the expiration of the 5 days, he fails to return the bill with his objections within 3 days after their next meeting.

Second question: "2. Will you also kindly advise the Governor as to whether or not the five day provision for the Governor's consideration of a Bill or Resolve includes the day of receipt of the Act, or does the five day period begin the day following, for a period of five days, Sundays excepted."

The law seems clear that in construing the 5 day period in Article IV, Part Third, Section 2 of the Maine Constitution, time shall start the day following the presentation of the Bill or Resolve to the Governor, Sundays excepted. There is numerous law on this point and this office has previously issued an opinion to Governor Frederick Payne whereby the same conclusion was reached.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 27, 1963

To: Asa A. Gordon, Coordinator, Maine School District Commission

Re: Disposition of School Building in Seboeis Plantation by Condemnation

Your memorandum of June 20, 1963 is hereby acknowledged.

Facts:

Recently, Seboeis became a part of School Administrative District #31. Prior to the formation of the District, the Plantation operated a one-room school on property owned by a resident of the Plantation.

Questions:

- (1) If the building is transferred to the District and used for school purposes, may the Board of Directors, under the provisions of Section 15, take the land and a suitable playground by condemnation?
- (2) Or, if the building is not transferred to the School Administrative District, may the Plantation take the land and a suitable playground by condemnation?

Opinion:

Section 15 of Chapter 41, R. S. 1954, as amended, provides the following condemnation authority, *inter alia*:

"When a location for the *erection* or *removal* of a schoolhouse and requisite buildings has been legally designated by vote of the town at any town meeting called for that purpose or by the school directors of a school administrative district, . . . they may lay out a schoolhouse lot and playground, not exceeding 25 acres