

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

Henry L. Cranshaw, State Controller

Effective date of legislation.

FACTS:

L. D. 678 authorizing construction of a ferry boat for the Maine State Ferry Service was passed by the 103rd Legislature in regular session. That Legislature adjourned on July 8, 1967.

The Act was presented to the Governor for his signature on July 7, 1967, but was not signed until October 2, 1967. On October 2, 1967 the 103rd Legislature again convened, in special session.

A question has arisen as to the effective date of the Act.

QUESTION:

If the Governor signs an act passed at the regular session of the Legislature, not within five (5) days from presentment, but within the prescribed time limit after the Legislature has re-convened in special session, when does the Act become effective?

LAW:

1. *Each bill must be signed by the Governor within a specified time limit.*

“Every bill or resolution, having force of law . . . shall be presented to the Governor and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall enter the objections at large from its journals, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and, if approved by two-thirds of that House, it shall have the same effect, as if it had been signed by the Governor. . . . *If the bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.*” Constitution of Maine, Article IV, Part 3, § 2. (Emphasis supplied)

2. *Legislative acts become effective 90 days after recess of the Legislature.*

“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.* . . .” Constitution of Maine, Article IV, Part 3, section 16. (Emphasis supplied.)

3. *‘Recess of the Legislature’ means adjournment without day.*

“. . . ‘recess of the Legislature’ means adjournment without day of a session of the Legislature. . . .” Constitution of Maine, Article IV, Part 3, section 20. (See

also: (Opinion of the Justices, 1917, 116 Me. 587.)

The only exception to the ninety-day rule is found in Article IV, Part 3, section 19 of the Constitution of Maine which provides that an approved referendum measure, unless a later date is specified in the measure, takes effect thirty days after the Governor has made public proclamation of the result of the vote on the measure.

ANSWER:

See opinion.

OPINION:

Under the scheme set up in the Maine Constitution, acts not subject to referendum become effective a certain number of days *after recess of the Legislature passing the Act*. There is no provision for the running of time after the date of any other act such as affixation of the Governor's signature. (See Maine Constitution, Article IV, Part 3, section 16.)

Note that the only Legislature which can give life to a bill is the Legislature which gave birth to the bill. Without exception, all measures, not subject to referendum, become effective ninety days after the recess of the Legislature passing the measure. Since the same Legislature may be in session more than once, the language might be read as "recess of the legislative *session*" which passed it.

It would seem that the rule should be the same in all cases that a law however signed, or given final passage, becomes effective ninety days after the recess of the legislative session which passes it.

The crucial language in our Constitution is "ninety days after recess of the Legislature."

The general rule is that a statute takes effect according to express constitutional direction. (Sutherland, Statutory Construction, § 1602). For example, legislation might take effect a period of time after passage; adjournment; publication or filing with the Secretary of State.

In some states a bill is effective after "passage." It has been held that the word "passage" means not the final act of approval by the Governor, but the vote of the Legislature. However, other courts have determined that "passage" refers to the date of approval by the executive, or from the time when it otherwise becomes a law under the Constitution, by passage over veto, or by failure to return it to the Legislature.

Under such language, the date from which a time would run is variable, since the date of passage is variable, but in Maine one date would apply – the date of recess of the Legislature. (See: 50 Am. Jur., Statutes, § 505; 82 C.J.S., Statutes, § 404 and Sutherland, Statutory Construction, § 1611.)

The rationale for the rule by some Courts, that the act is effective upon signature by the Governor is that the executive, in passing on the laws that are submitted to him for approval, is considered as a component part of a lawmaking body and is engaged in the performance of a legislative rather than an executive function. (See: 50 Am. Jur., Statutes, § 96.)

The language of our Court in the case of *Stuart v. Chapman*, 1908, 104 Me. 17, does indicate that the approval of the Governor is the last legislative act which brings the birth of life into a statute and makes it a part of the laws of the State. See: *Palmer v. Hickson*, 1883, 74 Me. 447.

Even though the Maine Governor occupies such a position, since the effective date of

a bill is dependent upon the date of “recess” rather than “passage” the holding of the above case would not change the result expressed herein.

It makes no difference when a bill is signed by the Governor if in fact it is signed within the proper period. It becomes effective ninety days after recess of the Legislature which passes it. Time of signature is of no essence since the Governor may sign within five days or not sign it at all and the act will still become law and be effective ninety days after recess. The crucial date is date of recess.

THEREFORE,

1. An Act signed by the Governor within five days after presentment to him during a legislative session becomes effective ninety days after the recess of that legislative session.

2. An Act not signed by the Governor, while the Legislature is in session, and not returned by him within five days, becomes effective ninety days after recess of the legislative session.

3. An Act not signed by the Governor while the Legislature is in session but returned by him within the five-day period and passed by the Legislature over his objections, becomes effective ninety days after the recess of that legislative session.

4. An Act not signed by the Governor when a session of the Legislature terminates by recess before the expiration of five days and the Governor fails to return it with his objections within three days after their next meeting becomes effective ninety days after the recess of the legislative session which passed it.

5. An Act signed by the Governor within three days after the Legislature reconvenes, within the ninety day period, when the session of the Legislature passing the Act terminated by adjournment, previous to the expiration of the five-day period, becomes effective ninety days after the date on which the Legislature passing it recessed.

6. To the same extent, an Act signed by the Governor, within three days after the Legislature reconvenes, beyond the ninety day period, when the session of the Legislature terminated by adjournment, previous to the expiration of the five-day period, becomes effective immediately, since the Governor’s signature is essential to the Act’s effectiveness.

7. Too, an Act not signed by the Governor and not returned to the Legislature within three days after the Legislature reconvenes, beyond the ninety-day period, when the session of the Legislature terminated by adjournment, previous to the expiration of the five-day period, becomes effective immediately upon the expiration of the period of time in which the Governor has to act.

If in the same circumstances, the Governor returns the Act within the three-day period, unsigned with his objections and the Legislature passes the Act over his objections, it becomes effective immediately upon final passage by the Legislature pursuant to Article IV, Part 3, section 2 of the Constitution of Maine.

JON R. DOYLE
Assistant Attorney General

November 13, 1967
Mental Health and Corrections

William E. Schumacher, M.D., Director

Mentally Ill Physicians; Me. Rev. Stat. Ann., Tit. 32, § 3152 (1964).

FACTS: