

MAINE STATE LEGISLATURE

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To James B. Longley, Governor

Dept. Executive

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject: Gubernatorial Approval of Legislation - Timing
Ref: Opinion Request of May 5, 1976.

SYLLABUS:

In order to have a legislative enactment become law with gubernatorial approval, the Governor must sign the enactment within five days of the time he receives it, even if the Legislature adjourns in the interim. Bills and resolves which are left unsigned by the Governor after legislative adjournment do not become law at that time, but may become effective at a later date depending upon future action of the Legislature and the Governor. If the same Legislature which passed such enactment later reconvenes, the Governor must be allowed three days while the Legislature is in session, during which period he may exercise his veto. If the Legislature stays in session less than three days and the enactment has not been returned, the Governor's "pocket-veto" will remain effective.

FACTS:

The 107th Legislature enacted certain bills and presented them to the Governor for approval and signature. The Legislature then adjourned without day, before the Governor took action on the bills and within five days after presentation of the bills to the Governor. The constitutional provision governing this situation is Art. 4, Pt. 3, § 2, Constitution of Maine, which reads, in pertinent part:

"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 the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law."

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QUESTIONS:

1. Must the Governor sign such bill within five days after it was presented to him, in order for such bill to become law with the Governor's approval?
2. If the answer to the first question is affirmative, what is the status of those bills left unsigned?
3. If the next meeting of the Legislature lasts for less than three days, would such session activate that provision of Art. IV, Pt. 3, § 2, Constitution of Maine, which provides in part that such unsigned bills shall become law if not returned to the Legislature "... within three days after the next meeting of the Legislature which enacted the bill. . . ?"

ANSWERS AND REASONS:

(1) The answer to the first question is affirmative. This office has previously expressed the opinion that the Governor may approve a legislative enactment after the Legislature had adjourned, so long as he signs the bill within five days from the time it was received from the Legislature. Opinion of the Attorney General, June 26, 1963. We have reviewed this prior opinion in light of the amendment to Art. IV, Pt. 3, § 2, adopted in 1973, and we reaffirm the opinion. If the Governor intends to affirmatively approve an act by signing it, he must do so within five days of the time he receives it, regardless of whether the Legislature adjourns during this period.

(2) The answer to the second question is that those bills left unsigned where the Legislature adjourned prior to expiration of the five-day period do not become law, but retain a potential for future effect depending upon subsequent events. If the Legislature originally prevented return of the bill by adjourning, i.e., prevented gubernatorial veto at that time, there are four possible results under Art. IV, Pt. 3, § 2, as follows:

- A. If that same Legislature does not meet again, the bill or resolution would not become law.
- B. If that same Legislature does meet again and the Governor does not then return the bill or resolution with his veto message within the first three days of that session, it becomes law with no further action.

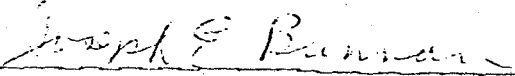
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- C. If that same Legislature does meet again and the Governor does return the bill within three days, the Legislature could vote to override the veto, in which case the bill or resolve would become law.
- D. If there are the same circumstances as in #3, but the Legislature does not override the veto or fails to act, the bill or resolve would not become law.

An analysis of the possibilities just listed indicates that the future of such unsigned bills depends largely upon whether there is another meeting of the Legislature which passed them. Therefore, these bills are in a state of suspended effect, pending possible future action of the Legislature and the Governor.

(3) The answer to the third question is negative. It is our opinion that the term "... no such next meeting. . . ." as used in the last proviso of Art. IV, Pt. 3, § 2, as amended, must be interpreted to refer to a session of sufficient duration to allow the Governor three days in which to submit his veto, if that is his decision. Therefore, if the same Legislature which passed a bill or resolution meets again, but such session lasts less than three days, and if during this period the Governor does not exercise his formal veto power, the unsigned bill or resolution would still not become law. Stated differently, the Legislature must stay in session for at least three days in order to preempt the Governor's "pocket-veto," if the Governor declines to exercise a direct veto.

There is little legislative history of record to give guidance in construing the 1973 amendment to Art. IV, Pt. 3, § 2. However, one comment indicated an intent to give the Governor a "pocket-veto" and clarify the reference to the next meeting of the Legislature which passed the bill or resolution. L.R., House, April 27, 1973, p. 2080. Consideration of an unsigned enactment of one Legislature would not carry over to the regular session of the next Legislature. There was also an indicated intent that the Governor would continue to have three days once the same Legislature reconvenes, in which to exercise his veto. This three-day period would allow the Governor time in which to decide whether to exercise his veto power in light of circumstances then existing. In this regard, the three-day period serves the same function as the five-day period allowed the Governor to consider his approval when he receives legislation in the middle of a session. Therefore, our opinion is based on consistency of interpretation as well as the available legislative history.


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