

MAINE STATE LEGISLATURE

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June 21, 1976

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Effective date of Non-Emergency Legislation

SYLLABUS:

Non-emergency legislation, which has been sent to the Governor at the end of one session of the Legislature and which is then passed over the Governor's veto when returned by the Governor at the beginning of a subsequent session, becomes effective ninety days after the Legislature recesses at the end of the subsequent session.

FACTS:

The 107th Legislature passed several non-emergency bills during the final days of the second special session. The Legislature then recessed on April 29, 1976, which was less than five days after these bills had been presented to the Governor for his approval. The Governor did not sign these bills, and instead returned them to the Legislature with his veto messages when the Legislature reconvened for a one-day special session on June 14, 1976. The Legislature overrode the Governor's veto on several of these bills and then recessed.

QUESTION AND ANSWER:

When will those non-emergency bills enacted over the Governor's veto during the special session of June 14, 1976, become effective? The legislation in question will become effective ninety days after recess of the special session, i.e., September 13, 1976.

REASONS:

The Constitution provides that no legislation of a non-emergency nature ". . . shall take effect until ninety days after the recess of the legislature passing it. . . ." Art. IV, Pt. Third, § 16, Constitution of Maine. This office has previously noted that since one Legislature may meet in more than one session, the latter part of the quotation might be read as "after the recess of the legislative session." Report of the Attorney General 1968-1972, p. 73, opinion dated November 1, 1967. However, the question remains which legislative session should be used as the basis for counting the ninety-day period from its recess, in situations where the Legislature passed the bill to be enacted in one session but overrode the Governor's veto in a subsequent session.

David S. Silsby

Page 2

June 21, 1976

Consideration of the provisions of Art. IV, Pt. Third, § 16 together with other constitutional provisions and review of the legislative history of that section, clearly indicates that the ninety-day period should begin with the recess of the session in which the veto was overridden. Article IV, Pt. Third, § 17, grants the electors an opportunity to put legislation to referendum if certain petition requirements are met within ninety days after the recess of the Legislature and if such legislation was not then in effect due to the provisions of the preceding § 16. Since the legislation in the present case would not be eligible for referendum until the Legislature had overridden the Governor's veto, the first date a petition drive would have begun was June 14. If the legislation would become effective ninety days from the recess of the prior session on April 29, the right to referendum granted by § 17 would be seriously curtailed. Carrying the logic one step further, if the second session had not met until after July 28 and the ninety days were counted from April 29, the right to referendum would be nullified completely and the legislation would be effective before it was finally approved. Therefore, in order to give full effect to both constitutional provisions, the ninety-days must begin with the recess of the legislative session during which the legislation attained final capacity for effectiveness.

The conclusion just stated also has support in legislative history. Both sections 16 and 17 of Article IV, Part Third, of the Constitution were added by Amendment XXXI. That Amendment was the result of approval of Chapter 121 of the Resolves of 1907, which was titled "Resolves proposing an Amendment to Article four of the Constitution of the State of Maine, establishing a people's veto through the optional referendum, and a direct initiative by petition and at general or special elections." Sections 16 and 17 were designed to be read together as part of this referendum plan, and this was confirmed during debate on the measure. Legislative Record 1907, p. 645, House - March 14, 1907. An attempt to interpret § 16 without also considering and giving full effect to § 17 would frustrate their combined purposes and be contrary to common rules of interpretation and construction. The right of the people of Maine to put legislation to referendum is an important right which should not be limited, especially in cases where the legislation in question has caused disagreement between the Legislature and the Governor, and therefore may raise issues upon which the people will wish to exercise this right.

It should be noted in passing that the opinion of this office dated November 1, 1967, supra, contained a comment that in the

David S. Silsby
Page 3
June 21, 1976

circumstances in issue, such legislation would become effective immediately upon final passage, i.e., veto override, by the Legislature. We disapprove this part of the prior opinion for the reasons stated above.

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JEB/ec

cc: W. G. Blodgett, Executive Director
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