

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 11, 1979

Honorable Joseph E. Brennan
Governor of Maine
State House
Augusta, Maine 04333

Dear Governor Brennan:

You have requested an opinion on two questions concerning art. IV, pt. 3, § 2 of the Maine Constitution, in particular that part of the article which sets forth the time within which the Governor must act on a bill or resolution before it becomes law without his signature. The article provides in relevant part:

"If the bill or resolution shall not be returned by the Governor within ten 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"

Your questions are: 1) whether the day on which a bill or resolution is presented to the Governor is excluded from the computation of the ten days, and 2) whether legal holidays are, like Sundays, excepted from the computation of the ten days. Our research leads us to conclude that the day of presentation is to be excluded from the computation of the ten days, and that legal holidays are to be included. The bases for these conclusions are discussed below.

There is no Maine case construing this constitutional provision. Nonetheless, judicial interpretations of similar provisions strongly support the conclusion that the day of presentation is not to be counted as one of the ten days.

In construing another constitutionally-provided time period commencing "after" an event, the Court said:

" . . . The words of the constitution suspending the effect of a legislative act are these: 'No act . . . shall take effect until ninety days after the recess of the legislature passing it' etc. . . . The Legislature of 1917 adjourned April 7. Therefore the period of suspension ends at the expiration of ninety days after April 7th. A full period of ninety days is provided for. If it was a period of 10 days, it would expire on midnight April 17. As it is ninety days it expired by the same method of computation at midnight on July 6, 1917." Opinion of the Justices, 116 Me. 557 (1917) (emphasis added)

The "method of computation" quite clearly requires that the counting of the period of time begins at 12:01 a.m. of the day following the day on which the act or event, "after" which the time period begins to run, took place.

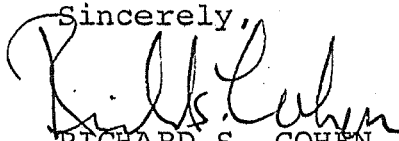
Maine cases construing statutory time periods similar in operation to this constitutional period consistently exclude the day of the initiating act or event. See, e.g. Page v. Weymouth, 47 Me. 238 (1859); Oatman v. Walker, 33 Me. 67 (1851); Flint v. Sawyer, 30 Me. 229 (1849); Tuttle v. Gates, 24 Me. 398 (1844); Homes v. Smith, 16 Me. 183 (1839); Eaton v. Emerson, 14 Me. 340 (1837); Wing v. Davis, 7 Me. 33 (1830); Windsor v. China, 4 Me. 298 (1826). See also Bigelow v. Wilson, 1 Pick. 485 (Mass., 1823). The reasons given for exclusion include the evident intention that the full period of time be given; the fiction that the legal "day" is indivisible, thus nothing can occur "after" a day until that day has expired; and the view that "after" is a term of exclusion. We note that the general statutory rule of construction regarding computation of time periods related to civil or criminal actions or other judicial proceedings, 5 M.R.S.A. § 71(12), requires computation according to Rule 6(a), M.R. Civ. Pro. and Rule 45(a), M.R. Crim. Pro.; these rules exclude the day on which the initiating act is done or to be done. See also opinions of the Maine Attorney General, 1951-54 Attorney General's Report 47; 1963-64 Attorney General's Report 64. On these bases, we feel quite confident

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in concluding that the day of presentation is to be excluded in computing the ten-day period within which the Governor must act under art. IV, pt. 3, § 2.

Regarding your second question, the express language of art IV, pt. 3, § 2, leads us to conclude that legal holidays, other than Sundays, are not excluded from the ten-day period. Under fundamental rules of constitutional law, where the constitution explicitly provides for a subject, there is no basis for extension, alteration or detracton by legislative act. Jones v. Me. State Highway Comm'n., 238 Me. 226 (1968); Opinion of the Justices, 133 A. 265 (1926). By analogy, an explicit constitutional provision may not be extended by implication or other interpretive act. Since art. IV, pt. 3, § 2 explicitly excludes Sundays from the ten-day computation ("Sundays excepted"), the exception cannot be extended to encompass other legal holidays.

I trust this opinion is responsive to your inquiry. If I can be of further assistance, please let me know.

Sincerely,

RICHARD S. COHEN
Attorney General

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