

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 10, 1979

James S. Henderson
Deputy Secretary of State
State Office Building
Augusta, Maine 04333

Dear Mr. Henderson

This is in response to your inquiry as to whether certain bills signed by the Governor more than ten days after they were presented to him have been approved in accordance with art. IV, pt. 3, section 2 of the Constitution so that they may be issued public law chapter numbers. We answer in the negative.

As we understand them, the facts prompting your question are as follows: The first regular session of the 109th Legislature enacted certain bills and presented them to the Governor for approval and signature. These bills were "AN ACT to Clarify the Administration of the Department of Manpower Affairs" (H.P. 1470 - L.D. 1658), "AN ACT to Protect Subcontractors from Non-payment on Certain Contracts with the Department of Transportation (S.P. 594 - L.D. 1667), and "AN ACT Concerning Abuse Between Family or Household Members" (H.P. 910 - L.D. 1133). All of these bills were nonemergency legislation. Each was finally enacted in the Senate and presented to the Governor on June 8, 1979. The Legislature then adjourned without day on June 15, 1979, before the Governor had taken action on the bills. The Governor signed two of these bills on June 22, 1979 and the third on June 25, 1979.

Two important points emerge from the recitation of facts set out above. First, the Legislature adjourned without day less than ten days after each of the bills was presented to the Governor. Second, the Governor signed each of the bills more than ten days (except Sundays) after it was presented to him.

The ultimate question, then, is whether the Governor may approve bills more than ten days (except Sundays) after they have been presented to him if the Legislature has finally adjourned before the ten-day period has elapsed. This specific inquiry has been addressed in two previous Opinions of the Attorney

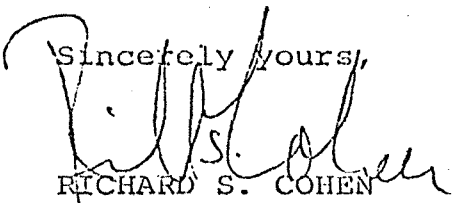
James S. Henderson
Page Two
July 10, 1979

General, copies of which are enclosed. Both of those opinions conclude that the Governor may not approve a bill more than ten days after its presentation to him even if the Legislature finally adjourns while the ten-day period is still running.* Accordingly, the purported approval of these bills by the Governor has no force and effect, and your office should not assign them public law chapter numbers at the present time.

We should note that the bills under consideration will become law if the Governor does not return them to the 109th Legislature within three days after its next meeting.

Please feel free to contact me if I can be of any further service.

Sincerely yours,


RICHARD S. COHEN
Attorney General

RSC:ks

Enclosures

* Subsequent to the issuance of the enclosed opinions, art. IV, pt. 3, section 2 of the Maine Constitution was amended to extend the time for gubernatorial approval of legislation from five to ten days. That change in no way affects the rationale underlying our prior opinions.

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Dear Steve:

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 legislative, 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

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OFFICE OF THE CLERK OF THE MAINE
C. Art 4, Pt 3, sec. 2
Inter-Departmental Memorandum Date May 7, 1976

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."

May 7, 1976

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.


May 7, 1976

- 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.


JOSEPH E. BRENNAN
Attorney General

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