

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

September 21, 1979

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(m)

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

Re: Effective Date of Legislation.

Dear Mr. Henderson:

This is a follow-up of our opinion dated July 10, 1979, which dealt with the issue of whether the Governor had the power to sign bills into law more than 10 days (except Sundays) after they were presented to him, when the Legislature had adjourned prior to the elapsing of the 10 days. We answered that question in the negative, and, as a consequence, a further issue was raised regarding the effective date of these bills should the Governor fail to return them to the next meeting of the Legislature as provided in the Maine Constitution, art. IV, pt. 3, § 2.

I.

As a preliminary matter, it must be determined what constitutes the "next meeting" of the Legislature for purposes of the return of legislation under art. IV, pt. 3, § 2 of the Maine Constitution. This issue has become significant since it is now likely that there will be a special session in the very near future. The question, then, is whether the language "next meeting of the same Legislature" in § 2 means the next chronological session, whether special or regular, or the next regular session. The problem arises because similar language in at least one other state constitution has been interpreted to mean the next regular session of the

Legislature. Arnold v. McKellar, 9 S.C. 335 (1878).^{1/} The rationale for this decision was that the word "meeting" implied a regularly recurring event and further, that special sessions ought to be limited to the matters which made them necessary. 9 S.C. at 342.

Based on the clear language of art. IV, pt. 3, § 2 and its legislative history, we do not believe that the Maine Constitution can be interpreted to produce the same result which the South Carolina court reached under its constitutional provision. In 1973, the Maine Legislature passed, and the people accepted, a constitution resolution amending the language of § 2. Previously, the provision had read, in relevant part:

If the bill or resolution shall not be returned by the Governor within five [now 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 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.

Me. Const., art. IV, pt. 3, § 2
(pre-1973 version)

The language of the last phrase was amended by Amendment CXXII to the Constitution to read:

^{1/} The relevant language from the South Carolina Constitution reads as follows:

'If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not have such force and effect unless returned within two days after their next meeting.'

9 S.C. at 341, citing
S. Caro. Const., art. III, § 22.

. . . 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.

Me. Const., art. IV, pt. 3, § 2
(emphasis added)

The plain language of § 2, in its present form, indicates that the Governor must return a vetoed bill to the next chronological session of the same Legislature which enacted it, whether such a session is labelled "special" or "regular." It is a well settled principle of constitutional and statutory construction that, where there is no ambiguity and no evidence of other intent, the language of a statute is to be given its ordinary meaning. E.g., State v. Flemming, 377 A.2d 448 (Me. 1977); Union Mutual Life Ins. Co. v. Emerson, 345 A.2d 504 (Me. 1975). When § 2 is given its ordinary meaning, there is no basis for excluding special sessions.

The above interpretation is consistent with the Legislature's intent, as reflected by the history of the constitutional resolve proposing the amendment which resulted in the present language of art. IV, pt. 3, § 2. As noted during the legislative debate:

At the present time, the Governor has five days to sign a bill and if he doesn't do it within that time, it becomes law unless the legislature adjourns before the five days are up. Then he has three days after we meet again. This bill says that he has this same extra time if the same Legislature which enacted the bill meets again in special session. However, if there is no special session, the bill does not become law. Now, at the meeting of the next Legislature, he still has the three days. This would do away with this provision. That is why I call it a mini-pocket veto.

2 Me. Legis. Record (1973)
at 3080 (remarks of
Representative Ross)

It is clear from the above remarks that the legislative intent underlying the amendment was, at least in part, to allow the Governor to return bills approved by both Houses at a previous session to an immediately following special session.^{2/} The intent to include special sessions within the definition of "next meeting" is evident from these comments, especially in light of the fact that at the time they were made, the special session was the only type of meeting permissible other than the single regular session. (See Me. Const., art. IV, pt. 3, § 1, prior to 1975 amendment.) Finally, the generality of Representative Ross' reference to special sessions is strong, if not conclusive, evidence that the "next meeting of the same Legislature" was meant to include any following sessions of the same Legislature. It must thus be concluded that "next meeting of the same Legislature," as used in Me. Const., art. IV, pt. 3, § 2, means the next chronological session of the same-numbered Legislature which approved the relevant bill, whether that session is specially called by the authority of the Governor or the Legislature or is regularly scheduled under Me. Const., art. IV, pt. 3, § 1.^{3/}

Having determined that "next meeting" includes special sessions, the question arises whether the Governor, by excluding from his "call" for the special session consideration of the pending bills, can prevent the operation of that part of art. IV, pt. 3, § 2 which gives effect to those bills which are not returned by the Governor within

^{2/} Another purpose of the amendment was to give the Governor a "pocket veto" power which he had not previously had. See Remarks of Rep. Ross, supra. That power exists when the Legislature approving the bill does not reconvene before the expiration of its term.

^{3/} This interpretation also furthers the evident purpose of this section to expedite the return of legislation to the Legislature so that it will be finally acted upon as soon as possible. Expedition of legislation and the need for certainty are interests which have been recognized and held deserving of protection in the general area of procedure whereby legislation becomes effective. See Wright v. United States, 302 U.S. 583 (1938).

three days of the beginning of the next session. For a number of reasons, we answer this question in the negative.^{4/}

First, by its plain language and intent, section 2 appears to be a self-executing constitutional provision of equal dignity with the constitutional power of the Governor to call a special session for specific purposes. The two provisions are not in conflict and can easily be read together to allow reconsideration by the Legislature at the special session of bills returned by the Governor. Moreover, in the case where such pending bills are not acted upon by the Governor and are allowed to become law by the elapsing of the three-day period, no action by the Legislature is required; the bills become law by the mere expiration of time in the same way as if the Governor had signed them. (See discussion of effective date, infra.) Finally, it would appear to be beyond the scope of our constitutional system to read into the Constitution, where it does not appear explicitly, a power in the Governor to undercut the independent functioning of a self-executing provision of the Constitution. We cannot justify, by the words of our Constitution or any reasonable implications therefrom, an interpretation which would allow the Governor to alter the operation of art. IV, pt. 3, § 2. We conclude, therefore, that it is beyond the power of the Governor to arrest the operation of the provisions of § 2 by which bills approved by the Legislature at a previous session become law at the next meeting of the same Legislature.

II.

Once the meaning of "next meeting" in § 2 of art. IV, pt. 3 has been determined, there remains the question of the effective date of laws not returned by the Governor within three days of the beginning of that meeting. The relevant portion of section 2 reads as follows:

^{4/} For purposes of this opinion, we assume arguendo that the Governor has authority to limit the Legislature's consideration in special sessions to those matters creating the "extraordinary occasion" upon which the session is based. Me. Const., art. IV, pt. 1, § 13; see also Arnold v. McKellar, supra. Since that precise question is not now before us, we deem it unnecessary to address it, and nothing included herein should be considered as expressing an opinion on that issue.

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 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. . . .

Me. Const., art. IV, pt. 3, § 2
(emphasis added)

The use in the section of the term "same force and effect as if he had signed it" in the event of a ten-day delay and the reference to that same language in the event the Legislature adjourns prior to the ten-day period evidence the intent that both situations be treated alike. In each situation, the effect of a failure by the Governor to return a vetoed bill to the Legislature during a session is the same "as if he had signed it." Id. The expiration of the time during which the Governor could veto the bill gives the bill the same effect as if it had been signed on that last day.

Section 2 by itself, however, does not purport to establish the effective date of bills which become law when they are not returned to the next session of the Legislature within three days of its commencement. A determination of the effective date of such bills requires that the effect of § 16 of art. IV, part 3, be integrated with the effect of § 2. Section 16 reads, in relevant part:

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 session of the Legislature in which it was passed, unless in case of emergency. . . .

Me. Const., art. IV, pt. 3, § 16

Reading §§ 2 and 16 together leads to the conclusion that the bills in question, if not returned within three days of the beginning of

the next meeting of the Legislature, become effective either immediately, if they are emergency measures, or 90 days after the recess of the session of the Legislature in which they were passed.

The remaining problem is to determine which "session of the Legislature" passed these bills, since the recess of that session determines the effective date of non-emergency measures under § 16.^{5/} There are only two choices for the "enacting session." It must be either the session during which both Houses of the Legislature approve the bill or the following session of the same Legislature to which they may be returned by the Governor. For a number of reasons, we conclude that it is the latter.

A single, readily apparent and most important policy underlies the 90-day delay built into § 16 and the related provisions connecting the effective date of statutes to the recess of the legislative session which enacted them. This policy is the protection of the people's right to referendum. That the right of referendum is a significant one which cannot be abridged by any action of the Legislature or Governor is well settled in this State. Farris ex rel. Dorsky v. Goss, 143 Me. 227 (1948). It is equally clear that the 90-day delay created by § 16 has the paramount, if not sole, purpose of effectuating that right.

Section 16 of art. IV, pt. 3 of the Maine Constitution was a part of the same constitutional resolve which enacted the rights of referendum and initiative. 1907 Laws of Maine, c. 121.^{6/} The parallel between the 90-day delay contained in § 16 and the 90-day

^{5/} The effective date of emergency measures which are not subject to referendum (Morris v. Goss, 147 Me. 89 (1951)), is also governed by § 16: their "immediate" effective date is on the fourth day of the "next meeting."

^{6/} Effective dates of legislation prior to the enactment of § 16 were governed by statute, see, e.g., 1903 Me. Rev. Stat. ch. 1, § 5, and the specific statute in effect at that time provided for an effective date only 30 days after the recess of the enacting Legislature, unless another date was stated in the particular bill. The drafters of § 16 evidently wanted to take the power to establish effective dates out of the hands of the Legislature in order to safeguard the referendum process. The result is that § 16 severely limits the authority of the Legislature to make legislation effective prior to 90 days after adjournment.

filing requirement in art. IV, pt. 3, § 17^{7/} strongly indicates that the primary purpose of the effective date provision was to allow the electorate an adequate opportunity to exercise the right of referendum, and the transfer of the effective date provision from statute to constitution is additional evidence of the intent to safeguard the referendum by withdrawing the power to change effective dates from the Legislature. The legislative debate on this resolve makes it clear that the purpose of the 90-day period was to allow referendum petitions to be filed before the referred law went into effect. 1907 Me. Leg. Rec. 640-645. This connection has also been noted by several other authorities. See L. Pelletier, "Initiative and Referendum in Maine," 1951 Bowdoin Coll. Bull. 7, 12, 16; Galbreath, "Provisions for State Wide Initiative and Referendum," 43 Annals of the American Academy of Political and Social Science 81, 101-02 (1912).

To interpret § 16 as providing that the pending bills would become effective 90 days after the adjournment of the session at which they were approved by the Houses of the Legislature would, in our view, undercut the very policy which prompted the adopting of that section. Such an interpretation would severely curtail, and in some cases possibly even eliminate, the right of the people to override legislative action through the referendum process. Thus, the only interpretation which is faithful to the underlying purpose of § 16 is that the phrase, "the session of the Legislature in which it was passed," means that session at which the Governor

^{7/} Section 17 mandates that referendum petitions be filed "by the hour of five o'clock, p.m., on the ninetieth day after the recess of the Legislature [which passed the bill]. . . . "

could have returned the pending bills under art. IV, pt. 3, § 2 of the Constitution.^{8/}

A further point supports this view. It is well settled that no bill can become effective until the final legislative act has occurred, and that act is the Governor's approval or failure to act. In Stuart v. Chapman, 104 Me. 17 (1908), the Law Court stated that

The last legislative act is the approval of the governor. . . . The approval of the governor was the last legislative act which breathed the breath of life into these statutes and made them part of the laws of the state.

Id. at 23

This long-standing principle was recent reaffirmed in an Opinion of the Justices of the Maine Supreme Judicial Court upholding the power of the Governor to veto a bill with a referendum clause. Opinion of the Justices, 231 A.2d 617 (Me. 1967), in which the Justices stated:

^{8/} Based on the language in art. IV, pt. 3, § 17, which refers to measures "passed by the Legislature," it might be argued that the right to a referendum could still be preserved even under the interpretation rejected in this opinion. That argument presupposes the applicability of § 17 to measures which have been approved by both Houses of the Legislature but which have not been acted upon by the Governor. We reject that argument for two reasons. First, by its express terms, § 17 is limited to measures which would be effective but for the fact that the constitutional time period required for a law to take effect has not yet elapsed. Implicit in this limitation is the requirement that the measure must have been approved by both the Legislature and by the necessary gubernatorial action or inaction. Second, the argument would necessitate that in order to preserve their rights, the opponents of a bill would be compelled to collect signatures and file petitions even though the bill might still be vetoed by the Governor. We believe it highly unlikely that the drafters of § 17 intended to require the people to undertake a time-consuming and possibly expensive petition drive which might ultimately be rendered unnecessary.

The legislative process here involved is composed of concurring action by both Houses of the Legislature together with consideration by the Chief Executive resulting in (a) approval, (b) disapproval, . . . or (c) failure of the Chief Executive to either approve or disapprove within the applicable period of time prescribed in the last sentence of Article IV, Part Third, Section 2.
[citations omitted]

Id. at 611

See generally Klosterman v. Marsh, 180 Neb. 806, 143 N.W.2d 144 (1966).

For the reasons stated above, then, it must be concluded that the legislative session which "passed" a pending bill, for purposes of § 16, is the "next meeting" during which the Governor could have disapproved and returned the bill.^{9/}

III.

A number of questions related to computing time may arise under the interpretation of the Maine Constitution offered herein. First, there is the question of whether the Governor must present back vetoed bills within three calendar or three legislative days. The general rule is that calendar days are counted. Anno. 54 A.L.R. 339 (1928). Hence, the Governor must present bills back to the Legislature within three calendar days of the beginning of the session, or they will have the same effect as if he had signed them on the third day. Days in which the Legislature is in temporary recess (as opposed to adjournment sine die) are

^{9/} We should note that the above conclusion is in apparent conflict with a previous opinion of this office issued to the State Controller over the signature of an Assistant Attorney General on November 1, 1967. It is clear that the prior opinion was reached without the benefit of reference to various historical materials dealing with the purpose of the 90-day effective date delay enacted along with the referendum and initiative measures in 1907. For this reason, the prior opinion fails to give sufficient weight to the paramount purpose of that delay, which was to provide an adequate period for the invocation of the referendum. We therefore feel that the views expressed herein provide a more accurate interpretation of Me. Const., art. IV, pt. 3, § 2 than our prior opinion, and accordingly, we must reject the conclusion reached in that opinion.

generally considered legislative days for purposes of the Governor's presentation to the Legislature of vetoed bills, so that, if the Legislature meets for one or two days and then adjourns temporarily, the returned bills must still be presented by the end of the third calendar day of the session.^{10/} Wright v. United States, supra; Kennedy v. Sampson, 511 F.2d 430 (C.A.D.C. 1974); Redmond v. Ray, 268 N.W.2d 849 (Ia. 1978); cf. Building Comm'n. v. Jordan, 48 So.2d 565 (Ala. 1950); see also Opinion of the Atty. Gen., July 13, 1977.

Related problems may arise if the Legislature returns in special session and sits for fewer than three days. One question which may be anticipated is whether the length of such a short session is to be counted against the three days allotted the Governor to return vetoed bills to the next meeting of the Legislature under art. IV, pt. 3, § 2. In other words, if there is a two-day session, does the Governor then have only a single day at the next session in which to return the vetoed bills? We conclude that this would not be the case, since such an interpretation would undercut the apparent purpose of the three-day period: to provide the Governor with adequate time at the beginning of the session to prepare and submit veto messages.

Another possible view would be that if the session lasts fewer than three days, the Governor must nonetheless return the bills during the course of the session or lose his veto power. We reject that view on the ground that the Constitution should not be interpreted in such a way as to allow the Legislature to infringe the Governor's right to veto by its power to adjourn. See Opinion of the Atty. Gen., May 7, 1976.

It is, therefore, our opinion that, should the Legislature remain in special session for fewer than three days, and should the Governor choose not to return a bill during that time, the bill would be carried over to the next session, regular or special, of the same Legislature, and the Governor would then have three days to exercise his veto power.

10/ The proposed special session is scheduled to begin on Thursday, October 4, 1979. In light of the fact that three legislative days will elapse prior to the following Sunday, we have not addressed the issue of whether Sundays are to be included within the three days allowed the Governor.

Conclusion

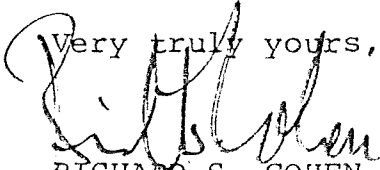
In conclusion, we may summarize the opinions expressed herein as follows:

1. The "next meeting" of the same Legislature, for purposes of the Governor's return of vetoed bills left from the previous session, pursuant to Me. Const., art. IV, pt. 3, § 2, is the next session of the same Legislature, whether specially called by the Governor or Legislature or regular, as defined in Me. Const., art. IV, pt. 3, § 1.
2. The effective date of legislation not returned by the Governor to that next meeting is governed by art. IV, pt. 3, § 16, with the "next meeting," as defined above, considered as the session in which the legislation passed. In other words, the legislation becomes effective 90 days after the adjournment of the session during which it became law by virtue of its not being returned to the Legislature by the Governor. The same conclusion would apply if the bill was vetoed during the session and the Legislature overrode the veto.
3. A temporary recess of the "next meeting" will have no effect on the calculation of the three days allotted to the Governor to return vetoed bills, and bills may be returned by him to an agent of the originating House during such a recess.
4. Should the "next meeting" adjourn after a session of fewer than three days, any bill not returned by the Governor during that session will be carried over to the next session of the same Legislature, and the Governor will have the same power during that session to return the bill within three days, or to allow it to become law, as he would have had in the previous session. If there is no other session of the same Legislature, the bill will not become a law.

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We hope this information addresses the concerns which you voiced in requesting both this and the previous related opinion.

Very truly yours,


RICHARD S. COHEN
Attorney General

RSC/ec

cc: Honorable Joseph Sewall
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