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SECRETARY OF STATE—HOW TO DETERMINE DATE WHEN AN ACT OF
GENERAL ASSEMBLY GOES INTO EFFECT.

SYLLABUS:

In determining upon what date an act of the General Assembly goes into effect under Section 1c of Article II of the Constitution of Ohio, the day upon which the act is filed with the Secretary of State should be excluded, and the act becomes effective on the ninetieth day after the day upon which the act was filed by the Governor in the office of the Secretary of State, and in computing this time no exception should be made of Sunday, whether it be the first or the last day of the ninety days after the act shall have been filed.

COLUMBUS, OHIO, April 5, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Will you kindly advise this department as to the construction of the following language taken from Section 1-C, Article 2 of the Constitution of the State of Ohio:

‘No law passed by the General Assembly shall go into effect until ninety (90) days after it shall have been filed by the Governor in the office of the Secretary of State, etc.’ ”

The complete sentence as found in Section 1c of Article II, about which you inquire is as follows:

“No law passed by the General Assembly shall go into effect until ninety (90) days after it shall have been filed by the Governor in the office of the Secretary of State, except as herein provided.”

Your question has been answered by the Supreme Court of Ohio in the case of *Elder vs. Shoffstall*, 90 O. S., 265, decided June 16, 1914. In so far as pertinent to the question under consideration, the facts in that case as stated in the opinion, were as follows:

“On the 6th day of February, 1913, the General Assembly of this State amended Section 11455, General Code, by providing that ‘In all civil actions a jury shall render a verdict upon the concurrence of three-fourths or more of their number. The verdict shall be in writing and signed by each of such jurors concurring therein, * * *.’ This act was approved by the Governor on the 12th day of February, 1913, and was filed in the office of the secretary of state February 13, 1913.”

In that case the court had occasion to determine upon what date the act above mentioned, which was filed in the office of the Secretary of State on February 13, 1913, became effective.

Immediately following the above statement Judge Donahue says:

“Under the provisions of Section 1c of Article II of the Constitution, as amended in 1912, this law did not become effective *until ninety days after it had been filed* in the office of the Secretary of State.”

and after a discussion of the other points involved in the case, says at page 274, as follows:

“Section 11455, as amended, however, relates to the remedy only, and therefore does apply to all actions commenced in the common pleas courts of the state *after the 14th* day of May, 1913, regardless of the time when the cause of action arose.”

The holding of the court, however, as set forth in parts 1 and 2 of the syllabus, was as follows:

“1. Section 11455, General Code, as amended February 6, 1913 (effective May 14, 1913), does not apply to causes pending in the common pleas courts of this state on the 13th day of May, 1913.

2. This amended section relates to the remedy only and applies to all actions commenced in the common pleas courts of this state *on and after the 14th day of May, 1913*, regardless of the time when the cause of action arose.” (Italics the writer’s.)

It has long been the rule of the Supreme Court that the syllabus in each case contains the law of the case. As stated in *State ex rel. vs. Edmondson*, 89 O. S. 93, 107:

“It has long been the rule of this court that the syllabus contains the law of the case. It is the only part of the opinion requiring the approval of all the members concurring in the judgment. Where the judge writing an opinion discusses matters or gives expression to his views on questions not contained in the syllabus, it is merely the personal opinion of that judge. The judges concurring in the judgment and the law as announced in the syllabus are not required or expected to express their concurrence in or their dissent from matters merely *obiter*.”

The facts in the case of *Elder vs. Shoffstall*, et al., above set forth, show that the statute under consideration in that case was filed in the office of the Secretary of State on February 13, 1913. According to the law of the case, as contained in the syllabus, the statute became effective “on and after the 14th day of May, 1913.” From this it is apparent that in computing the time when the act under consideration in that case became effective, the Supreme Court, according to the general rule of law, excluded the first day, or the day on which the act was filed, and included the last, upon which day (May 14, 1913) the law became effective, that is, the Supreme Court held that “*ninety (90) days after*” February 13, 1913, the filing date, was May 14, 1913, and that the act became effective *on and after that date*.

Another question involved in your inquiry is, if the last day of the limitation falls on Sunday is the time to be automatically extended to the next day. On this subject the Court in the case of *American Tobacco Co. vs. Strickling*, 88 Md. 500, 69 L. R. A. 909, said:

“(a) As a general rule where an act is required to be done in any certain number of days after or before a fixed time, Sunday is to be included in computing the number of days when it exceeds seven, but if it is less than seven, Sunday must be excluded.

(b) The general rule subject to but few exceptions is that statutory time of over seven days cannot be extended because the last day falls on Sunday.”

It is also significant that in the language referred to in Section 1c of Article II, no exception is made of Sunday, while in Section 16 of Article II, pertaining to the time within which a bill shall be returned by the Governor, the following language is used:

"If a bill shall not be returned by the Governor within ten days, *Sundays excepted*, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the Secretary of State."

Specifically answering your question, I am of the opinion that in determining upon what date an act of the General Assembly goes into effect under Section 1c of Article II of the Constitution of Ohio, the day upon which the act is filed with the Secretary of State should be excluded, and that the act becomes effective on the ninetyeth day after the day upon which the act was filed by the Governor in the office of the Secretary of State, and that in computing this time no exception should be made of Sunday, whether it be the first or the last day of the ninety days after the act shall have been filed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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OHIO PENITENTIARY—DUTY OF WARDEN WHEN CONVICTION OF PRISONER HAS BEEN REVERSED.

SYLLABUS:

Where a person has been tried and convicted and is in the penitentiary pursuant to sentence, upon a subsequent reversal of such conviction and the case being remanded to the trial court for a new trial, the Warden of the penitentiary, upon receipt of a certified copy of the mandate of the reversing court, must forthwith cause such person to be conveyed to the jail of the county in which he was convicted and committed to the custody of the sheriff thereof.

COLUMBUS, OHIO, April 5, 1927.

HON. PRESTON E. THOMAS, *Warden of Ohio Penitentiary, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of April 4, 1927, which reads:

"We have confined in this institution one John Kosienski, serial number 54874, received from Cuyahoga county on November 4, 1925, to serve a life sentence, having been convicted in the September, 1925 term of the Common Pleas Court of Cuyahoga county of the crime of murder in the first degree (with a recommendation of mercy).

I have this day received a certified copy of a Mandate of the Common Pleas Court of Cuyahoga county with a letter signed by Geo. P. Heidt, Chief Deputy Clerk, Criminal Branch of the Cuyahoga county courts, which letter is self explanatory. I am herewith enclosing both mandate and letter for your consideration.

Will you please forward me your opinion as to my legal duty in regard to returning this man to the authorities of Cuyahoga county?"