

## GENERAL ASSEMBLY:

1. TO COMPUTE TEN DAY PERIOD WITHIN WHICH BILL PRESENTED TO GOVERNOR WILL BECOME A LAW, IF NOT RETURNED BY GOVERNOR WITH HIS OBJECTIONS, TO HOUSE IN WHICH BILL ORIGINATED, DAY OF PRESENTATION IS TO BE EXCLUDED AND TENTH DAY INCLUDED—ARTICLE II, SECTION 16, CONSTITUTION OF OHIO.
2. TERM "ADJOURNMENT" WITHIN MEANING OF ARTICLE II, SECTION 16, CONSTITUTION OF OHIO, MEANS A FINAL ADJOURNMENT OF THE GENERAL ASSEMBLY, NOT AN ADJOURNMENT FROM DAY TO DAY OR A TEMPORARY ADJOURNMENT.
3. RECESS OR TEMPORARY ADJOURNMENT—PROPER RETURN OF BILL, TOGETHER WITH GOVERNOR'S OBJECTIONS IN WRITING, MAY BE MADE TO PRESIDING OFFICER, CLERK OR OTHER OFFICER, OR ANY MEMBER OF HOUSE IN WHICH BILL ORIGINATED.
4. WHERE GOVERNOR DISAPPROVED AN ITEM IN A BILL, MAKING APPROPRIATION OF MONEY, AND COPY OF ITEM WITH GOVERNOR'S WRITTEN OBJECTIONS WAS DELIVERED TO HOUSE WHERE BILL ORIGINATED, ON ELEVENTH DAY FOLLOWING DAY ON WHICH BILL WAS PRESENTED TO HIM, THE ATTEMPTED VETO OF GOVERNOR WAS INEFFECTIVE—SUCH ITEM ON EXPIRATION OF TENTH DAY FOLLOWING DAY OF PRESENTATION OF BILL TO GOVERNOR, BECAME LAW.

## SYLLABUS:

1. In computing the ten day period within which a bill of the General Assembly presented to the Governor, will, under the terms of Section 16 of Article II of the Constitution, become a law if not returned by him with his objections, to the House in which such bill originated, the day of presentation is to be excluded and the tenth day included.

2. The term "adjournment", within the meaning of Section 16 of Article II of the Constitution of Ohio which requires the Governor to return to the House in

which it originated, a bill with his objections in writing, within ten days after being presented to him, and provides that if he does not do so it shall become a law in like manner as if he had signed it, unless the General Assembly by adjournment prevents its return, means a final adjournment of the General Assembly and not an adjournment from day to day or a temporary adjournment.

3. During a recess or temporary adjournment of the General Assembly, a proper return of a bill, together with the Governor's objections thereto in writing, may be made to the presiding officer, clerk or other officer, or any member of the House in which such bill originated.

4. Where an item in a bill making an appropriation of money was disapproved by the governor, and a copy of such item with his objections in writing was delivered to the House in which such bill originated, on the eleventh day following the day on which such bill was presented to him, the attempted veto of the Governor was ineffective and such item, on the expiration of the tenth day following the day of presentation of such bill to the Governor, became law.

Columbus, Ohio, October 9, 1945

Hon. Edward J. Hummel, Secretary of State

Columbus, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion which reads:

"It is my understanding that Sections 162, 2278 and 2279 of the General Code of Ohio require me, as Secretary of State, to certify, publish and distribute the laws of this state. However, I now am in doubt as to my duty in respect to the certification, publication and distribution of Item No. 3 of page No. 16, Am. H. B. No. 485—Mr. Ballard—as law. The reasons for my doubt arise from the following facts:

1. On July 6, 1945, the Senate adjourned until Thursday, July 19, 1945, at 1:00 o'clock p. m.

2. On July 6, 1945, the House of Representatives adjourned until Thursday, July 19, at 12:30 p. m., State Time.

3. On July 6, 1945, Am. H. B. No. 485 was presented to the Governor of Ohio for his approval or disapproval. The Governor personally accepted said bill and receipted for same in a book maintained by him for the purpose of showing bills presented to the Governor and his actions thereupon.

4. The enrolled copy of said Am. H. B. No. 485, signed by the Governor, with a message from the Governor that he had vetoed Item No. 3 on page No. 16 of Am. H. B. No. 485 was filed in my office on July 19, 1945, at 11:45 o'clock a. m.

5. The said book contains an entry on July 19, 1945, showing that a veto message and an Exhibit of Item No. 3 of Page 16 of Am. H. B. No. 485 was returned to the House of Representatives at 2:55 o'clock p. m. (The bill was not returned but for your information a copy of the papers returned is attached hereto marked Exhibit A and Exhibit B and made a part of this request.)

6. The House Journal of Thursday, July 19, 1945, page No. 2 shows that a motion to indefinitely postpone action on 'said item' was agreed to. (The 'said item' is the item referred to in the papers hereto attached.)

Inasmuch as the record clearly shows that the veto message and the exhibit attached thereto being the same papers hereto attached were not returned to the House of Representatives until 2:55 o'clock p. m. on July 19, 1945, being the eleventh day after Am. H. B. No. 485 was presented to the Governor for approval or disapproval, and inasmuch as Am. H. B. No. 485 has not yet been returned to the House wherein it originated I am inquiring if, under the provisions of Section 16 of Article II of the Constitution of Ohio, Item No. 3 of Page No. 16 of Am. H. B. No. 485 should be certified, published and distributed by me as a law by lapse or otherwise."

Exhibit "A" and Exhibit "B", referred to in your letter, are as follows:

"Exhibit 'A'

To the General Assembly:

I am returning herewith House Bill No. 485 approved in all respects, with the exception of the third item appearing on Page 16, and known as the Rosebraugh, Helen M. et al. Claim, bearing Claim No. 6220, and in the amount of \$59,654.59.

This item is disapproved because there is involved in the transaction out of which the claim grew, demands inuring to the benefit of the State of Ohio; these demands and claims of the State of Ohio against the Rosebraughs for compensation for the use and occupancy of land belonging to the State are unsettled. Before the State of Ohio pays the claims of the Rosebraughs, an adjustment should be made of the State's claims against those claimants.

Frank J. Lausche

Governor"

## "Exhibit 'B'"

## Item 3—Page 16—House Bill No. 485

Rosebraugh, Helen M., Lida L. Rosebraugh Williamson, John M. Rosebraugh, William T. Rosebraugh, and Lida L. Rosebraugh Williamson, as Executrix of the estate of Margaret E. Rosebraugh, deceased, of Buckeye Lake, Ohio, settlement in full for amount due on judgment rendered in favor of said claimants by the Court of Appeals of the Fifth District against the State of Ohio in Case No. 1836 in said Court. (No. 6220) \$59,654.59"

The facts and circumstances surrounding the filing of the bill in your office and the return of the papers to the House of Representatives are set out in your letter as follows:

"(a) On the evening of July 18, 1945, at about 8:00 o'clock p. m. the Governor's secretary called at the office of the Clerk of the House of Representatives for the purpose of delivering to the Clerk a veto message on Item No. 3 of Page No. 16 of H. B. No. 485 but, upon finding the door locked, the Governor's Secretary returned with the papers to his office without giving either the bill or the veto message to any officer or member of the House of Representatives or even leaving it there.

(b) On the evening of July 18, 1945, from about 7:00 o'clock p. m. until 11:00 o'clock p. m. the Speaker of the House of Representatives was in his office;

(c) On the day and evening of July 18, 1945, the Chamber of the House of Representatives was open and remained open until after 11:00 o'clock p. m.

(d) Various members of the House of Representatives were in and about the Chamber of the House of Representatives on the day and evening of July 18, 1945."

In Section 16 of Article II of the Constitution of Ohio, it is provided:

"\* \* \* Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage. \* \* \* 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. The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill."

House Bill No. 485, passed by the 96th General Assembly on June 28, 1945, is entitled "An act to make sundry appropriations". Contained therein are various items of appropriation in payment of sundry claims filed with and approved by the Sundry Claims Board. Therefore, under the terms of the concluding sentence of the above constitutional provisions, the Governor is vested with authority to disapprove the item in question.

It will be noted that the limitation of time for the return of a bill by the Governor is *within ten days*, Sundays excepted, after being presented to him. Therefore, if a bill is not returned by the Governor on or before the tenth day, Sundays excepted, after receipt thereof by him, it becomes a law.

In the computation of time prescribed by constitutional or statutory provisions for the performance of an official act, the generally recognized rule is to exclude the first day and include the last. *State, ex rel. v. Elson*, 77 O. S. 489, 62 Cor. Jur. 984, 26 R. C. L. 745.

In computing the time within which an act of the Legislature presented to the chief executive of a state will become a law if not returned by him, it has been generally held, under constitutional provisions similar to those of Ohio, that the day of presentation is to be excluded and the last day included. *Price v. Whitman*, 8 Cal. 412; *Iron Mountain Co. v. Haight*, 39 Cal. 540; *Croissant v. De Soto Improv. Co.*, 87 Fla. 530; *State ex rel. Dawson v. Sessions*, 84 Kan. 856; *Cammack v. Harris*, 234 Ky. 846; *State ex rel. State Pharmaceutical Asso. v. Michel*, 52 La. Ann 936; *State ex rel. Putnam v. Holm*, 172 Minn. 162; *Carter v. Henry*, 87 Miss. 411; *Beaudean v. Cap Girardeau*, 71 Mo. 392; *Re Soldiers' Voting Bill*, 45 N. H. 607, 613; *Re Opinion of Justices*, 86 N. H. 603; *Corwin v. Comptroller Gen.* 6 S. C. 390.

From the facts set out in your letter, it appears that the bill in question was presented to the Governor for his approval or disapproval, on July 6, 1945, and that on July 19, 1945, a veto message, together with a copy of Item 3, page 16 of the bill, was returned to the House of Representatives.

Between July 6 and July 19 there were two intervening Sundays, to-wit, July 8 and July 15. Excluding then such Sundays and also, in accordance with the above stated rule, excluding the 6th of July, we find that the tenth day after the bill was presented to the Governor would fall on the eighteenth day of July. Therefore, unless the General Assembly by adjournment prevented the return of the bill on or before July 18, it would appear that the item in question became a law immediately after midnight of said date.

This brings me to the question of what amounts to an adjournment preventing the return of a bill, within the meaning of the above constitutional provision.

Reference to the Senate and House Journals of July 6, 1945, discloses that the Senate adjourned on said date until Thursday, July 19, 1945, at 1:00 P. M., and that on the same date the House of Representatives adjourned until July 19, 1945, at 12:30 o'clock P. M., State Time. Therefore, on the 18th day of July, 1945, the General Assembly was in temporary adjournment.

While it might be said that the word "adjournment", as used in the above constitutional provision, might signify either one which is temporary or one which is final in character, for the reason that said word is not qualified by the word "final", it is noteworthy in this respect, however, that the context contains the phrase "unless the General Assembly by adjournment prevents its return". Clearly, from this language the adjournment must be one *which prevents the return of a bill*. The session during which the bill in question originated and was passed had not yet come to an end on July 6. It can scarcely be contended that the Constitution contemplates the return of a bill only when the House in which such bill originated is duly assembled and actually sitting in session. If such were the case, an over night adjournment on the tenth day following presentation of a bill to the Governor would operate to prevent the return of such bill.

For illustration, suppose the Governor, who is clearly entitled to his ten full days for consideration of a bill presented to him, decides to return a bill to the house in which it originated with his objections in writing, at 4:00 P. M. of the tenth day after having received it, would he be prevented from doing so because such house had adjourned at 3:30 P. M. on that day until the following morning? Could he then in accordance with the constitutional provision file such bill with the Secretary of State, together with his objections in writing, and thereby exercise absolute veto powers, although the General Assembly was in session and ready to consider his objections and if it so desired, repass such bill notwithstanding his objections? Clearly, the answer to both of these questions is in the negative.

In the instant case the General Assembly, when it assembled on July 19, had a right to consider repassage of any bills vetoed by the Governor and to say that the temporary adjournment of July 6 prevented the Governor from returning any bills which were presented to him on said date, to the House of origin, and require him to file such bills with the Secretary of State, would have deprived the General Assembly from the opportunity of considering the Governor's objections and repassing any such bills notwithstanding his objections.

While I am unable to find any decisions of the courts of this state on the precise question, the rule supported by the weight of authority in other jurisdictions is that a constitutional provision to the effect that if the Governor does not return a bill within a certain number of days after it is presented to him, the same shall become a law unless the Legislature, by adjournment prevents its return, has reference to a final adjournment of the Legislature, or legislative session, and not to a mere temporary adjournment or recess, or to an adjournment from day to day. *State ex rel. Crenshaw v. Joseph*, 175 Ala. 579; *Harpending v. Haight*, 39 Cal. 189; *State ex rel. State Pharmaceutical Asso. v. Michel*, *supra*; *Opinion of Justices*, 3 Mass. 567; *State ex rel. Putnam v. Holm*, *supra*; *Miller v. Hurford*, 11 Neb. 377; *Re Soldiers' Voting Bill*, *supra*; *Hequembourg v. Dunkirk*, 49 Hun, 550; *Corwin v. Comptroller Gen.*, *supra*; *Johnson City v. Tennessee Eastern Electric Co.*, 133 Tenn. 632.

In light of the above, I find myself constrained to the view that a mere temporary or interim adjournment is not such an adjournment as

the above constitutional provision contemplates as preventing the return of a bill by the Governor, and consequently the term "adjournment" should be held to mean a final adjournment.

It might be pointed out, however, before passing to your next point of inquiry, that the ultimate answer to your specific question would be the same, even though the temporary adjournment of July 6 is considered as an adjournment which prevents the return of a bill, within the meaning of the Constitution.

It will be observed that the Constitution provides that in the event the General Assembly by adjournment prevents the return of a bill, it shall become a law unless, within ten days after such adjournment it shall be filed by the Governor, with his objections in writing, in the office of the Secretary of State. It is likewise worthy of note that the ten day limitation for filing a bill in the office of the Secretary of State, unlike the provisions dealing with the return of a bill to the House in which it originated, does not except Sundays. It merely states "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". Your letter states:

"The enrolled copy of said Am. H. B. 485, signed by the Governor, with a message from the Governor that he had vetoed Item No. 3 on Page No. 16 of Am. H. B. No. 485 was filed in my office on July 19, 1945, at 11:45 o'clock a. m."

Therefore, even if it should be concluded that the temporary adjournment of July 6 prevented the return of the bill in question to the House of Representatives, the filing thereof by the Governor in the office of the Secretary of State on July 19 would have been too late and the veto of no effect. The General Assembly adjourned on July 6. The tenth day thereafter would have been July 16. Furthermore, even if Sundays were excepted, the tenth day would have fallen on July 18. Therefore, in either event, or under any construction placed upon the constitutional provision, the Governor's attempted veto was ineffective.

I shall now proceed to a consideration of the circumstances surrounding the return and the filing of the bill as set out in your letter.

It has been held, in the absence of provisions to the contrary, that if the House in which a bill originated has adjourned for the day, or if there



has been no final adjournment, it still has an organized existence as a legislative body, with its president, clerk and other officers to whom under such circumstances delivery of a bill and a veto message may be made. *Harpending v. Haight*, supra.

In *State, ex rel. Putnam, v. Holm*, supra, it was held :

“The requirement that the bill shall be returned to the house in which it shall have originated does not mean that it must be returned while such house is in session, but the return may be made to the presiding officer, secretary (or clerk), or to any member of such house.”

The court in its opinion delivered by Wilson, C. J., stated (pages 169 and 170) :

“There is no substantial reason for a bill’s being returned to the house while in actual session. It is in existence until the final adjournment regardless of whether it is in session or not. The presiding officer, secretary (or clerk), and members of either house are its authorized representatives. There is no reason why a return cannot be made to any one of them. It is the official duty of the one to whom the bill is returned promptly to report to the house when in session. Every member is the agent of the particular house to the extent of being a proper person to whom the governor may make such return, and the place where the return is made is not important.”

It has even been said that in the absence of the presiding officer or clerk, a deposit of the bill on the presiding officer’s desk would doubtless be sufficient. Relative thereto, it was stated in *State ex rel. State Pharmaceutical Asso. v. Michel*, supra (page 941) :

“If the house in which the bill, proposed to be vetoed, originated, should happen not to be in session when the Governor’s message arrived, delivery of the bill, with the Governor’s objection, to the presiding officer of the body, or to its clerk, would seem, according to the adjudicated cases, to suffice; and in case neither the presiding officer, nor the clerk, can be found, its deposit on the presiding officer’s table or desk, or in the office of the clerk would, doubtless, likewise suffice.”

From the facts set out in your letter, it appears that on the night of July 18, 1945, the Speaker of the House of Representatives was in his office between the hours of seven and eleven P. M., that various members of the House of Representatives were in and about the House Chamber

during the evening of said date and that the House Chamber remained open on such date until 11:00 P. M. Clearly, in such case a return of the bill in question could have easily been made by the Governor.

You state in your letter that House Bill No. 485 was never returned to the House of Representatives, but that on July 19 the Governor's veto message with respect to Item No. 3 on page 16 of said bill, together with a copy of said item, was returned.

While the conclusion reached herein precludes the necessity of considering the question of whether the delivery of a copy of the item in question meets the constitutional requirements which provide for the return of the bill, suffice it to say that unless the bill was before the House of Representatives, it is difficult to understand how that body could have exercised its constitutional right to repass such item, notwithstanding the Governor's disapproval thereof. It seems to me that even if such copy, together with the veto message, had been delivered to the House of Representatives within the constitutional ten day period, nothing would have been accomplished thereby.

However, since I have considered your question in light of the law, which in my judgment would govern if the bill itself had been returned upon the facts presented to me, it is unnecessary to pass upon this precise question, and consequently the above statements with respect thereto were made by me without undertaking to pass upon, or to give any opinion concerning this point.

Therefore, without further prolonging this discussion, you are advised that in my opinion House Bill No. 485, or the copy of the disapproved item therein, was not returned to the House of Representatives, with the Governor's objections to the item in question, within ten days after it was presented to him, and consequently his attempted veto was ineffective, and every item therein, including Item No. 3 on page 16 thereof, is now a part of a valid law and will, unless rejected by referendum, become effective on the 18th day of October, 1945.

Respectfully,

HUGH S. JENKINS

Attorney General