

Incidentally, your attention is called to the fact that the legislature, in the enactment of the mining laws of Ohio, failed to make any provision penalizing the owner, operator, lessee or agent of a mine who fails to comply with an order made, pursuant to the provisions of sections 898-25 and 898-27, by either the chief of the division of mines or a district mine inspector.

Section 898-171, referred to by the chief of the division of mines in his letter, reads as follows:

"It shall be unlawful for the employer of a miner or loader of the contents of any car of coal to pass any part of such contents over a screen or other device, for the purpose of ascertaining or calculating the amount to be paid such miner or loader for mining or loading such contents, whereby the total weight of such contents shall be reduced or diminished unless otherwise agreed between employer and miner or loader. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction, shall be fined for each separate offense not less than three hundred dollars nor more than six hundred dollars."

That section does not authorize or empower the chief of the division of mines to make any provisions in reference to the removal of machine cuttings from a mine.

Specifically answering your inquiry, I am of the opinion that there is no statutory provision in the mining laws of Ohio which expressly authorizes or empowers the chief of the division of mines or district mine inspectors to make orders in reference to the removal of machine cuttings from mines. Whether machine cuttings can create the dangerous conditions legislated against in sections 898-25 and 898-27 is a question of fact to be determined by the chief of the division of mines and/or the district mine inspectors.

If the district mine inspectors or the chief of the division of mines should be of the opinion that machine cuttings in a mine endanger the safety of the employes therein engaged, in such event and upon such determination by the chief of the division of mines or his district mine inspectors, an order may be made as provided by sections 898-25 and 898-27.

Respectfully,
JOHN W. BRICKER,
Attorney General.

69.

SALARY REDUCTION ACTS—EFFECTIVE DATE—APPLY TO ALL
OFFICIALS TAKING OFFICE ON JANUARY 1, 1933.

SYLLABUSs

1. *Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5, passed by the 89th General Assembly at the third special session on September 30, 1932, approved by the Governor on October 3, 1932, and filed in the office of the Secretary of State on October 3, 1932, became effective as laws of Ohio at midnight of December 31, 1932.*

2. *The provisions of Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5 of the 89th General Assembly, third special session, apply to those officials elected at the November election of 1932 whose terms of office commenced on January 1, 1933.*

COLUMBUS, OHIO, January 26, 1933.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We respectfully request your written opinion upon the following question:

The Act passed at the special session of the General Assembly held on September 30, 1932, fixing the compensation of public officials of State, Districts and Counties, approved by the Governor on October 3, 1932, and filed in the office of the Secretary of State on the 3rd day of October, 1932, provided that the judges and other officials elected at the November, 1932, election should be governed, as to salaries, by the provisions of said Act.

Said Act not being an emergency measure, when does the same become effective, under the ninety day provision of the Constitution, and, does said act apply to officials elected at the November election taking office January 1, 1933?”

I assume, by the fact that you refer in your communication to the act passed at the special session of the General Assembly held on September 30, 1932, “fixing the compensation of public officials of *state, districts and counties,*” etc., and by the fact that the last paragraph of your letter refers to officials elected at the November election taking office January 1, 1933, that you have in mind the provisions of Amended Substitute House Bill No. 1, and Amended Senate Bill No. 5 of the third special session of the 89th General Assembly.

After an examination of Amended Substitute House Bill No. 1, it would appear that it was effective on January 1, 1933, for section 6 of the act states that “This act shall be in effect from January 1, 1933, until December 31, 1934.” Also section 4 of Amended Senate Bill No. 5 states that “This act shall be in effect from January 1, 1933, until December 31, 1934.”

Undoubtedly, the legislature has power to provide that an act passed by it shall become operative at a specific date in the future, so long as such date is not earlier than the date on which such act would have gone into effect by virtue of the provisions of the Ohio Constitution if no effective date had been mentioned in the act. Thus, in order to determine whether or not January 1, 1933, is the effective date of Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5, it is necessary to determine at what date the bills would have become law if the legislature had not enacted sections 6 and 5 of the acts, respectively.

The Supreme Court of Ohio held in the syllabus of the case of *State vs. Lathrop*, 93 O. S. 79, as follows:

“Construing Section 1c of Article II with Section 16 of Article II of the Constitution, in so far as both sections relate to the time from which an act of the general assembly shall operate, laws providing for

tax levies, appropriations for current expenses of the state government and state institutions, and emergency laws, as defined in Section 1d of Article II of the Constitution, go into immediate effect when approved by the governor. All other acts go into effect ninety days after the same have been filed with the secretary of state, regardless of the date of approval by the governor."

Since the bills under consideration herein (Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5) are not laws providing for a tax levy, and neither are they laws appropriating money for current expenses of the state government and state institutions nor emergency laws, it is plain that they would be effective as laws, under the holding announced by the Supreme Court above, ninety days after they were filed with the Secretary of State.

It now remains to be determined how to compute the ninety days with respect to the present bills. In an opinion of the Attorney General for 1927, volume 1, page 494, it was held, as disclosed by the 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."

An examination of the above opinion of the Attorney General discloses that such opinion was based on the holding of the Supreme Court in the case of *Elder vs. Shoffstall*, 90 O. S. 265. The first and second paragraphs of the syllabus in said case read 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 sections 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."

It will be noted from the second paragraph of the syllabus that the court stated that the amendment of section 11455, General Code, applied to all actions commenced *on* and after May 14, 1913. A reference to page 270 of the opinion shows that the act in which section 11455 was amended "was filed in the office of the secretary of state February 13, 1913." Hence, excluding the day of filing (February 13, 1913), the act became effective on the ninetieth day. Therefore, the court in holding that the section applied to actions commenced on May 14, 1913, in effect applied the general rule, viz., in computing the time when an act becomes effective, where the law provides that it is to take effect a stated number of days after an act done (here ninety days), the day on which the act is done is excluded, and the act is effective on the ninetieth day thereafter.

Since the rendition of the opinion in the case of *Elder vs. Shoffstall*, the Supreme Court has in many opinions by implication adhered to the foregoing rule. For instance, see the case of *Pearis vs. Fredericks*, 113 O. S. 8, 10. In that case it was stated in paragraph 2 of the syllabus that "Upon July 26, 1923, an amendment to section 12603, General Code, became effective * * *." At the bottom of page 10, the same statement is made. A reference to volume 110 Ohio Laws, page 138, shows that the act in which section 12603 was amended was filed in the office of the Secretary of State, April 27, 1923 (see 110 O. L. 140). Hence, the court held by implication that section 12603 was effective on the ninetieth day after the act was filed in the office of the Secretary of State, the first day (the day of filing) being excluded.

Other illustrations are: The case of *Brenner vs. Spiegle*, 116 O. S. 631, at page 633, where it is stated: "The statute which is construed in this case took effect upon July 9, 1925;" the case of *Industrial Commission of Ohio vs. Marsh*, 121 O. S. 494, where it is stated in the first paragraph of the syllabus that "Section 1465-90, General Code, as amended 111 Ohio Laws, 227, effective July 14, 1925," etc.; the case of *The Union Trust Company vs. Hawkins, Admr.*, 121 O. S. 129, where it is stated in the third paragraph of the syllabus that "The amendment of section 8617, General Code, effective August 14, 1921," etc.; the case of *Smith vs. N. Y. C. R. R. Co.*, 122 O. S. 45, where it is stated in the second paragraph of the syllabus that "Section 11224, General Code, as amended May 4, 1927, effective August 2, 1927," etc., and in the opinion of the court at page 55, "applying that declaration (the second paragraph of the syllabus of the Shoffstall case) to the instant case, section 11224-1 applies to all actions commenced in the trial courts of this state on and after August 2, 1927, regardless of the time the cause of action arose;" and the case of *State ex rel. vs. Moore*, 124 O. S. 256, where in the per curiam opinion the court on page 256, states that the Pringle bill (114 O. L. 173) was effective July 31, 1931, and on page 257 the court further states that the Marshall bill (114 O. L. 815) "in the ordinary course of events would have become effective on October 14, 1931."

It is true that in the tenth paragraph of the syllabus of the case of *Miami County vs. Dayton*, 92 O. S. 215, the Supreme Court stated that the act then under consideration "becomes at the end of the ninety-day referendum period a valid act of the general assembly if otherwise constitutional." This might indicate a contrary rule to that set forth in the Shoffstall case. However, it appears to me that since the Supreme Court has so many times in the illustrated cases cited in a preceding paragraph, approved by implication the doctrine of the Shoffstall case, such should be regarded as the law until an express declaration on the point is made by said court.

Applying the rule set forth in the Attorney General's opinion, which rule it is shown the Supreme Court has followed, to the case at hand, it is clear that the bills would be effective as laws on January 1, 1933. Excluding the day on which the acts were filed with the Secretary of State (October 3, 1932), there are 28 days left in October, 30 days in November and 31 in December, making January 1, 1933, the ninetieth day. While the first day of January is ordinarily a holiday (section 8301, General Code), yet if the first day of January should happen to be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday. (See also section 8301, General Code.) Since the first day of January, 1933, fell on Sunday, January 1, 1933, was not a holiday this year. Hence, the opinion of the Attorney General is exactly in point here, for there is no exception to the rule made when the ninetieth day falls on Sunday.

In view of the above discussion, I am of the opinion, in specific answer to the first part of your question, that Substitute House Bill No. 1 and Amended Senate Bill No. 5 of the third special session of the 89th General Assembly became effective as laws of Ohio on January 1, 1933.

Coming now to the second part of your question, I may say that Article II, Section 31, Article II, Section 20, and Article IV, Section 14 of the Ohio Constitution, provide as follows:

Art. II, Sec. 31. "The members and officers of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office."

Art. II, Sec. 20. "The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

Art. IV, Sec. 14. "The judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased, during their term of office; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, shall be void."

Under the above constitutional provisions, it is obvious that the compensation of the officers involved in this opinion can not be diminished during their terms of office. Since the acts under consideration were effective January 1, 1933, and the officers involved in this opinion started their terms on January 1, the following questions arise:

1. At what moment of January 1, 1933, were Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5, operative, and at what moment of January 1, 1933, did the terms of the officers under consideration herein start?

2. Should it be determined that the acts were effective simultaneously with the commencement of the terms of the officers, would the application of the terms of the law to such officers' compensation be violative of the provisions of Article II, Section 31, Article II, Section 20, and Article IV, Section 14 of the Ohio Constitution?

Approaching the first query, I may quote the following rule from Lewis' Sutherland Statutory Construction, 2nd Edition, volume I, page 327, section 184, on the computation of time when an act is to take effect in a specified number of days:

"The rule now supported by nearly all of the modern cases is that the time should be computed by excluding the day or the day of the event from which the time is to be computed and including the last day of the number constituting the specified period. Thus, if an act is to take effect in thirty days from and after its passage, passing on the first day of March, it would go into operation on the 31st day of that month. It would commence to operate *at the first moment* of the last

day of the thirty, ascertained by adding that number to the number of the date of passage.

It is the general rule for computing time consisting of days, weeks, months or years. In such a computation days are entire days, fractions of a day being disregarded; and whether the computation is from an act done, or from a day or the day of a date, the day of such act or the day or date mentioned, is to be excluded."

(Italics the writer's.)

Applying the above rule set forth to the situation at hand, it would seem that Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5 were effective at midnight December 31, 1932, the first moment of the last day, the ninetieth (January 1, 1933).

As for the second part of the first query, I may say that in the case of *State ex rel. Forrer vs. McIntosh*, 190 Minn., 18, it appeared that by Section 9, Article 7 of the Minnesota Constitution, construed in the case of *State vs. Frizzel*, 31 Minn., 460, the official year commenced on the first Monday of January, at which time all terms of office terminated. The statute under discussion therein (R. L. 1905, Section 155), following the constitution, read:

"The term of office of every state and county officer shall begin on the first Monday in January next succeeding his election, unless otherwise provided by law."

The court stated at page 21:

"The day begins at twelve o'clock midnight, and the law does not recognize fractions of a day. *State vs. Brown*, 22 Minn., 482; note in *State vs. Michel*, 78 Am. St. 364.

It is fair to assume, however, that it was not intended by the framers of the constitution that the change in office should take place at twelve o'clock midnight. The incoming officers should have a seasonable and reasonable time at the beginning of the business portion of the first official day in which to qualify and assume their duties. Some unforeseen circumstances might delay the opportunity to qualify until the latter part of the day; but that fact could not result in depriving that day of the prestige accorded to it by the constitution. It is fairly to be inferred from the language of the section that, although the whole of the day belongs to the new official year, yet for convenience, and to prevent an interregnum, the qualification of the new officer may take place at a convenient hour, according to the exigencies of the case. If any business at all be transacted on that day by the outgoing board prior to the qualification of the new members, it should be confined to the closing up of pending matters, or to matters of necessity. All business which naturally pertains to the new official year is within the jurisdiction of the incoming board."

From the language of the above case, it seems clear that when a term of office is by constitution or statute directed to commence on a certain day, said term begins at midnight of the day before, although the officer may, for the

sake of convenience, not assume the duties of the office until a convenient hour of the day.

This now brings us to the second query, namely, since Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5 were effective at midnight of December 31, 1932, and the officers under consideration started their terms at midnight of December 31, 1932, could the reduction provided for in Amended Senate Bill No. 5 and Section 2 of Amended Substitute House Bill No. 1 be legally applied to such officers?

This query, in my estimation, depends on the meaning of the words "during" as used in the phrases "during his existing term" and "during their term of office," set forth in the constitutional sections above noted.

In 19 Corpus Juris, at page 838, the word "during" is defined as follows:

"The word is the equivalent of the Latin 'durante' and means after the commencement and before the termination of; in the time of; in or within the time of; at some period in; in the course of; throughout the course of; throughout the course, action, existence, or continuance of; through the continuation of; throughout the continuance of; continuously."

Applying the above definition of the word "during" to the phrases as used in the constitutional provisions under consideration, it would seem that the laws providing for reduction, to violate the constitutional inhibition would have to become effective *after the commencement* and before the termination of the term of the officers. The laws reducing salaries (Amended Substitute House Bill No. 1 and Amended Senate Bill No. 5) were effective simultaneously with the commencement of the terms of the officers under consideration and not *after the commencement* of their terms.

I am therefore of the opinion that the laws are applicable to the officers commencing their terms on January 1, 1933.

Respectfully,

JOHN W. BRICKER,
Attorney General.

70.

APPROVAL: NOTES OF STRATTON VILLAGE SCHOOL DIST., JEFFERSON COUNTY, OHIO—\$2,000.00.

COLUMBUS, OHIO, January 26, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.