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INVOLVING BILL PRESENTED TO GOVERNOR FOR APPROVAL WHEN GOVERNOR DOES NOT RETURN IT TO HOUSE OF ORIGIN WITHIN TEN DAYS—GOVERNOR MAY DISAPPROVE OF ONE ITEM OF A BILL BUT ALLOW THE BILL ITSELF TO BECOME LAW WITHOUT HIS SIGNATURE—OPINION NO. 496, OAG FOR 1945, P. 642—APPROVED AND FOLLOWED, §16, ART. II, OHIO CONSTITUTION, AMENDED H. B. NO. 1121 OF 104TH G. A., §1C, ART. II, OHIO CONSTITUTION

SYLLABUS:

1. The term "adjournment," as used in Section 16 of Article II, Ohio Constitution, said section requiring the Governor to return to the house of origin, a bill with his objections in writing, within ten days, Sundays excepted, after being presented to him, and providing 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, the end of a session, and not a temporary adjournment within a session. The second paragraph of the syllabus of Opinion No. 496, Opinions of the Attorney General for 1945, page 642, approved and followed.

2. Where pursuant to said Section 16 the Governor allows a bill making an appropriation of money to become law without his signature, but within the time allowed by that constitutional provision, files a disapproval of an item of the bill, with his written objections, in the house of origin, the item so disapproved is void unless repassed in the manner prescribed by the section for the repassage of a bill; and in such a case it is not necessary that the Governor return the entire bill to the house of origin.

3. Where a bill is presented to the Governor for his approval, and he does not sign it or return it to the house of origin within ten days, Sundays excepted, and the bill becomes a law pursuant to said Section 16, the Governor should file said bill with the Secretary of State.

4. Except for the two items expressly disapproved by the Governor in his message of August 14, 1961 to the House of Representatives, Amended House Bill No. 1121 of the 104th General Assembly became a law on August 15, 1961, and, pursuant to Section 1c of Article II, Ohio Constitution, will go into effect on November 14, 1961; and the two items of Amended House Bill No. 1121 so disapproved by the Governor are, under the provisions of Section 16 of Article II, void unless repassed in the manner prescribed by that section for the repassage of a bill.

Columbus, Ohio, November 10, 1961

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The question has arisen as to the status of Am. H. B. No. 1121. This bill was enacted by the legislature to make sundry appropriations. Both houses of the legislature signed the bill on the 2nd day of August, 1961, and adjourned until November 14, 1961. It is my understanding that the bill was delivered to the Governor on the same day.

"On the 14th day of August, 1961, the bill was filed with the Secretary of State, without the Governor's signature but with specific disapproval of several items as set out in his veto message filed with the bill in the Office of the Secretary of State; which message was also delivered to the Clerk of the House of Representatives.

"Under Article II, Section 16 of the Constitution, a bill not signed by the Governor becomes law in like manner as if he had signed it, if he does not return it within ten days, Sundays excepted, to the house from which it originated. The exception is also provided that in the event the General Assembly by adjournment prevents his return of the bill to the house from which it

originated, such a bill shall become law unless, within ten days after such adjournment, the Governor files it with his objection, in writing, in the Office of the Secretary of State.

“It will be noted that the bill was filed unsigned in the Office of the Secretary of State, with the veto message, ten days after receipt by the Governor, Sundays excepted. We are advised by the Clerk of the House that the bill was not returned to the House, but that only the veto message was received from the Governor.

“One of your predecessors in office had occasion to consider the meaning of the word ‘adjournment’ as used in the phrase ‘unless the General Assembly by adjournment prevents its return.’ The then Attorney General concluded that ‘adjournment’ as used in Article II, Section 16 of the Constitution, necessarily meant a final adjournment; since any other adjournment, such as an adjournment to a day certain, would not prevent the return of a bill to the legislature in view of the fact that employees of the legislature are normally available for the purpose.

“In view of the above facts, your formal opinion is requested to the following questions :

- “(1) Was the Governor prevented from returning Am. H. B. No. 1121 to the House of Representatives by virtue of its adjournment on August 2, 1961, to reconvene on November 14, 1961 ?
- “(2) If your conclusion to question No. 1 is, that the Governor was not prevented from returning the bill to the House by virtue of its adjournment, has the Governor complied with Article II, Section 16 of the Constitution, by filing a veto message with the Clerk of the House and by filing the veto message and the bill with the Secretary of State ?
- “(3) If your answer to question No. 1 is, that the Governor was prevented from returning the bill to the House of Representatives by virtue of its adjournment, has the Governor complied with the provisions of Article II, Section 16 of the Constitution, which requires the filing of the bill with the veto message in the Office of the Secretary of State; keeping in mind that the ten-day period for so filing with the Secretary of State does not exclude Sundays in the computation of the ten-day period ?
- “(4) In the light of your opinion with respect to questions No. 1, 2 and 3, is Am. H. B. No. 1121 in effect in its entirety; or is it in effect only as to the items which the Governor did not attempt to veto; or is it vetoed in its entirety ?”



1961 at 2:00 P.M., and the House adjourned until Tuesday, November 14, 1961 at 11:00 A.M. Thus, as of August 12th, 14th, and 15th the General Assembly was in temporary adjournment, the regular session of the 104th General Assembly still being in progress.

Under Section 16, *supra*, if the Governor does not sign a bill, or does not veto it, it becomes law within ten days, Sundays excepted, after being presented to him; except that if the General Assembly, *by adjournment*, prevents its return, it becomes law within ten days after adjournment.

It is a generally recognized rule that in the computation of time prescribed by constitutional or statutory provisions for the performance of an official act, the first day is excluded and the last included. (*State, ex rel. v. Elson*, 77 Ohio St., 489.) Not excluding Sundays, the tenth day after August 2, 1961, was August 12, 1961. Excluding Sundays, the tenth day after August 2, 1961 was August 14, 1961.

The first question that arises is whether the August 2, 1961, adjournment until November 14, 1961, was an "adjournment" within the purview of Section 16, *supra*. If so, the Governor would have had to file his objections with the Secretary of State by August 12th or the entire bill would have become law. The identical question was considered by one of my predecessors in Opinion No. 496, Opinions of the Attorney General for 1945, page 642, the second paragraph of the syllabus of that opinion reading:

"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."

Starting at page 647 of the 1945 opinion, my predecessor said:

"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 ad-

jourment 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."

In line with the reasoning of my predecessor, I am of the opinion that a temporary or interim adjournment is not an adjournment which would prevent the return of a bill by the Governor, and that the term "adjournment" as used in the constitutional provision here under consideration refers to a final adjournment—that is, the end of a session of the General Assembly. Accordingly, answering your first question, the adjournment of the Legislature on August 2, 1961, was not an adjournment which prevented the Governor from returning Amended House Bill No. 1121, *supra*, to the House.

The last sentence of Section 16 of Article II, *supra*, states :

"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."

Amended House Bill No. 1121, *supra*, appropriates money to pay certain claims; and since it is thus a bill making an appropriation of money, items of the bill were subject to disapproval of the Governor. The remaining question, therefore, is whether the two items here concerned were validly disapproved by the Governor.

The constitution is clear as to the procedure where the Governor disapproves *an entire bill*. In such a case, the bill, with the objections of the Governor, must be returned to the house of origin within ten days, Sundays excepted, after being presented to him.

Where only an item of an appropriation bill is disapproved, however, the constitution is not specific as to whether the entire bill must be returned to the house of origin, or whether a Governor's message disapproving specific items, along with his written objections, will suffice.

I have been unable to find any court decisions as to whether in disapproving items of a bill making an appropriation the Governor must return the bill to the house where it originated. In Opinion No. 496, *supra*, my predecessor indicated his thought that return of the bill in such an instance was necessary, and stated in that opinion, at page 651 :

"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."

On reviewing the pertinent constitutional provisions, and the reasoning of Opinion No. 496, *supra*, quoted immediately above, I find that I am in disagreement with my predecessor as to whether the entire bill must be returned to the house of origin where an item of an appropriation bill is disapproved.

It appears to me that the language of Section 16, *supra*, contemplates that the Legislature will have before it only what has been disapproved by the Governor. Thus, where a bill is disapproved, the entire bill must be returned. Where an item is disapproved, it is only necessary that the item be considered; and in this regard the Constitution states that the *item or items* must be repassed in the manner prescribed for the repassage of a bill, thereby indicating that it is necessary that only the item or items be before the Legislature.

Here I might note that in his message of August 14th, to the House, the Governor clearly indicated what items were disapproved; and the Legislature, having before it all the necessary records to prove the contents of a bill, would have no difficulty ascertaining the nature of the items to be considered.

Further, where an item of an appropriation bill is disapproved, it would be impossible for the Governor to return the entire bill to the house of origin, since the constitution requires that the bill be filed with the Secretary of State. In this regard, Section 16, *supra*, is clear that where the Governor approves a bill he shall sign it and thereupon it shall become a law *and be filed with the Secretary of State*. Also, where a bill is not returned to the house of origin in ten days, Sundays excepted, it becomes a law in like manner as if it had been signed; and it appears to follow that the bill must be then filed with the Secretary of State.

Section 1c of Article II, Ohio Constitution, provides, in part, as follows:



“\* \* \* No law passed by the general assembly shall go into effect until ninety days *after it shall have been filed by the governor in the office of the secretary of state*, except as herein provided. \* \* \*” (Emphasis added)

Exceptions to the ninety day rule are laws providing for tax levies, appropriations for the current expenses of the state government, and emergency laws necessary for the immediate preservation of the public peace, health or safety. Such laws go into effect when signed by the Governor. (Section 1d of Article II, Ohio Constitution.) The bill here in question is not, however, such a law.

In 37 Ohio Jurisprudence, 374, Statutes, Section 102, it is stated:

“A distinction has been observed between the time when a bill becomes a law and the time when it goes into effect or begins to operate. This distinction is apparently recognized in the Constitution of Ohio, which provides that a bill shall ‘become a law’ upon the signing thereof by the governor, or by the passage thereof over his veto, or by the failure to return it within the specified number of days, and that ‘no law,’ with certain designated exceptions, ‘shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of the state. \* \* \*’ ”

In *The State, ex rel. Bishop v. Board of Education*, 139 Ohio St., 427 (1942), the court cited with approval the following language from 25 Ruling Case Law, 796:

“ ‘The taking effect of an act is a different thing from its passage or enactment. \* \* \* in ordinary usage the passage of an act is well understood as that time when it is stamped with the approval of the requisite vote of both houses in the constitutional manner, signed by the presiding officer of each house, and approved by the chief executive \* \* \*. But its going into effect \* \* \* means its becoming operative as a law.’ ”

Section 1c of Article II, *supra*, specifically provides for the filing of a law in the office of the Secretary of State and no law (except tax levies, appropriations for current expenses, or emergency measures) shall go into effect until ninety days after it shall have been so filed. The ninety-day period starts to run from the date the act is filed with the Secretary of State (*The State of Ohio v. Lathrop*, 93 Ohio St., 79 (1915)); and the law goes into effect on the ninety-first day, excluding the first (*State, ex rel. Mauk v. Herrick*, 127 Ohio St., 247).

In 82 C.J.S. 99, Statutes, Section 62, it is stated as follows :

“The filing of an act in the office of the secretary of state, after its due passage and approval by the governor, is an essential step, when made so either by statute or by the constitution, but the duty to file does not embrace the filing of journals.”

Regarding the filing of an act, it has been held that a court will not take judicial notice of an act which is not on file in the Secretary of State's office. (*Burke v. Cincinnati*, 8 N.P. 109, 10 O.D. 542, (Superior Ct. of Cincinnati 1901).) Also, by statute, the Secretary of State is the custodian of the state's laws. (Section 111.08, Revised Code.)

Having the duty to file the bill with the Secretary of State on August 15th, it was impossible for the Governor to return the bill to the House, and I know of no way that the disapproval of items could have been handled other than that used by the Governor.

Further, I note that in addition to expressing his disapproval of the two items by message to the House, the Governor also wrote his disapproval of the items directly on the bill. Thus, the law on file with the Secretary of State clearly shows that the items were disapproved.

In view of the above, therefore, I am of the opinion that where the Governor does not sign or disapprove a bill within ten days, Sundays excepted, from the date received, he has a duty to file the bill with the Secretary of State regardless of the fact that he may have disapproved an item, or items, of the bill under Section 16, *supra*.

As to the case at hand, when the Governor did not sign or disapprove Amended House Bill No. 1121, *supra*, by August 14, 1961, the bill (except for the disapproved items) became a law in like manner as if he had signed it (on August 15, 1961). He then had a duty to file the bill with the Secretary of State, which was done on August 15, 1961. The bill (except for the disapproved items), not being a law providing for a tax levy, an appropriation for current expenses of state government, or an emergency law, goes into effect ninety days from August 15, 1961 (November 14, 1961). Since, within ten days, Sundays excluded, the Governor clearly disapproved two items of the bill and so notified the House, and returned his objections in writing to the House within that time, said items are void unless repassed in the manner prescribed by Section 16, *supra*, for the re-

passage of a bill; and when the House reconvenes on November 14, 1961, it may take up the question of repassage of those items.

In conclusion, it is my opinion and you are advised:

1. The term "adjournment," as used in Section 16 of Article II, Ohio Constitution, said section requiring the Governor to return to the house of origin, a bill with his objections in writing, within ten days, Sundays excepted, after being presented to him, and providing 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, the end of a session, and not a temporary adjournment within a session. The second paragraph of the syllabus of Opinion No. 496, Opinions of the Attorney General for 1945, page 642, approved and followed.

2. Where pursuant to said Section 16 the Governor allows a bill making an appropriation of money to become law without his signature, but within the time allowed by that constitutional provision, files a disapproval of an item of the bill, with his written objections, in the house of origin, the item so disapproved is void unless repassed in the manner prescribed by the section for the repassage of a bill; and in such a case it is not necessary that the Governor return the entire bill to the house of origin.

3. Where a bill is presented to the Governor for his approval, and he does not sign it or return it to the house of origin within ten days, Sundays excepted, and the bill becomes a law pursuant to said Section 16, the Governor should file said bill with the Secretary of State.

4. Except for the two items expressly disapproved by the Governor in his message of August 14, 1961 to the House of Representatives, Amended House Bill No. 1121 of the 104th General Assembly became a law on August 15, 1961, and pursuant to Section 1c of Article II, Ohio Constitution, will go into effect on November 14, 1961; and the two items of Amended House Bill No. 1121 so disapproved by the Governor are, under the provisions of Section 16 of Article II, void unless repassed in the manner prescribed by that section for the repassage of a bill.

Respectfully,

MARK MCELROY

Attorney General