

## OPINION NO. 72-067

## Syllabus:

House Bill No. 475, pertaining to an increase in the cigarette tax, became effective at 1:30 p.m., on December 20, 1971.

To: Gertrude W. Donahy, Treasurer of State, Office of Treasurer of State, Columbus, Ohio

By: William J. Brown, Attorney General, August 15, 1972

I have before me your request for my opinion, which may be stated as follows:

What is the effective time and date of House Bill No. 475, pertaining to the section providing for an increase in the cigarette tax?

The portion of House Bill No. 475 which provides for an increase in the cigarette tax is now Section 5743.02, Revised Code, which states, in part, as follows:

"To provide revenues for the general revenue fund of this state and to pay the interest, principal, and charges for the issuance and retirement of bonds and other obligations issued pursuant to Section 2e of Article VIII, Ohio Constitution and section 129.30 of the Revised Code, and pursuant to Section 2f of Article VIII, Ohio Constitution and section 129.50 of the Revised Code, an excise tax on sales of cigarettes is hereby levied at the rate of seven cents on each ten cigarettes or fractional part thereof.

"Only one sale of the same article shall be used in computing the amount of tax due."

The enactment of this provision amended the former version of Section 5743.02, which levied a tax at the rate of only four and one-half cents on every ten cigarettes sold.

Article II, Section 1d, Ohio Constitution, which provides for the date upon which laws passed by the legislature will take effect, provides, in part, as follows:

"Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect."

Since Section 5743.02 provides for a tax levy, it is clearly included within the first of the exceptions so listed and is, therefore, to go into immediate effect.

The term "immediate effect" has been interpreted as meaning that a law shall take effect at the moment it is signed by the Governor. The Supreme Court, in the course of an opinion holding that Article II, Section 1d is compatible with Article II, Section 16, which provides that a bill will become a law when it is signed by the Governor, made the following statement (State v. Lathrop, 93 Ohio St. 79, 87-88 (1915)):

"\* \* \* There is a class of laws not subject to the ninety-day period. Laws providing for current expenses of the state government and state institutions and emergency laws as defined in Section 1d of Article II, go into immediate effect by the express language of the constitution. This, of course, must be understood as meaning that such laws shall go into immediate effect as soon as they shall have been signed by the governor." (Emphasis added.)

Likewise, in Opinion No. 12, Opinions of the Attorney General for 1915, which explains the effect of Article II, Section 1d, my predecessor stated:

"Section 1d of Article II states that emergency laws shall go into immediate effect.

"Since a bill becomes a law upon the signature of the governor and does not necessarily have to wait upon the filing of the same with the secretary of state, I am of the opinion that an emergency act of the legislature becomes a law immediately upon its being signed by the governor." (Emphasis added.)

It might appear, therefore, that any bill of the type described in Article II, Section 1d, uniformly takes effect at the moment the Governor affixes his signature thereto.

The question is somewhat complicated, however, by the general rule that the law will not recognize a mere fraction of a day. The Supreme Court, in holding that an insurance policy which fails to specify the precise hour of expiration will remain in effect during the entire final day, states (Greulich v. Monnin, 142 Ohio St. 113, 117 (1943)):

"Fractions of a day are not generally considered in the legal computation of time,

and the day on which an act is done or an event occurs must be wholly included or excluded."

In Arrowsmith v. Hamering, 39 Ohio St. 573 (1883), the court applied the foregoing rule in determining the time at which a law was to become effective. It appeared that a statute which allowed a petition in error to be filed as a matter of right had been repealed and replaced by a new statute, which required that leave to file such petition must first be obtained from the court. It further appeared that the new statute specifically provided that it was to take effect "from and after its passage." In holding that the day of the statute's passage was to be included in its entirety, the court said in the syllabus:

"This act took effect on the day of its passage, and by presumption of law, from the commencement of that day, and not from its expiration."

Thus, in the absence of contrary legislative intent, a law is often presumed to be in effect throughout the entire day of its passage.

If this rule were to be applied in all situations, however, conflict might arise in relation to the Ohio constitutional provision prohibiting the passage of retroactive laws. In the Arrowsmith case, supra, the court, in noting such a possibility, said (39 Ohio St. at 576):

"A law passed in the latter part of the day, if it affected transactions of the earlier part of the day, would be retroactive in its operation as fully as if they took place the day before."

In holding that the statute, as amended, would not apply to a petition in error if it was filed on the same day that such statute was passed but prior to the time of its passage, the court said in the syllabus:

"This presumption will not prevail where it is in conflict with any right acquired in actual points of time on that day, before the act took effect. In such case the exact time in the day may be shown."

Moreover, Section 1.15, Revised Code, states essentially the same rule:

"\* \* \* If priority of legal rights depends upon the order of events on the same day, such priority shall be determined by the times in the day at which they respectively occurred."

To summarize, a law will generally be considered to be in effect throughout the entire day of its passage. This presumption will not apply, however, where it will affect a transaction completed on the same day but prior to the time of its passage. In such a situation, the rule against fractions of a day may be disregarded and the exact moment upon which the law become effective may be shown.

Because the rights and obligations of cigarette dealers were changed by the most recent amendment to Section 5743.02, in regard to the amount of tax to be collected on each sale of cigarettes, there seems to be no question that if the law were to be given effect at any time prior to the moment it was signed by the Governor, it would operate retroactively. The rule against fractions of a day, therefore, may be disregarded and the exact time of day at which the Governor signed the bill may properly be shown.

It appears that House Bill No. 475 was signed by the Governor at 1:30 p.m., on December 20, 1971. In light of the foregoing, I must conclude that the law went into effect at that moment.

In specific answer to your question, therefore, it is my opinion, and you are so advised, that House Bill No. 475, pertaining to an increase in the cigarette tax, became effective at 1:30 p.m., on December 20, 1971.