

**OPINION NO. 67-030**

**Syllabus:**

(1) The Primary Election to be held on May 2, 1967 will be governed by Public Law 89-387. Public Law 89-387 provides in part that during the period commencing at 2 O'clock antemeridian on the last Sunday of April of each year and ending at 2 O'clock antemeridian on the last Sunday of October of each year, the standard time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261-264), as modified by the Act of March 4, 1921 (15 U.S.C. 265), shall be advanced one hour and such time as so advanced shall for the purposes of such Act of March 19, 1918, as so modified, be the standard time of such zone during such period.

(2) Inasmuch as the election to be held on November 7, 1967 is not during the period commencing at 2 O'clock antemeridian on the last Sunday of April and ending at 2 O'clock antemeridian on the last Sunday of October, the provisions of Section 1.04, Revised Code, will not be suspended. For the November 7, 1967 election the six-thirty a.m. time and six-thirty p.m. time as set forth in Section 3501.32, Revised Code, will therefore be the time as set by Section 1.04, Revised Code.

---

To: Ted W. Brown, Secretary of State, Columbus, Ohio  
 By: William B. Saxbe, Attorney General, April, 7, 1967

In your request for my opinion you inquire as to what effect the provisions of Public Law 89-387, 89th Congress, relating to uniform time, as applied to Section 1.04, Revised Code, and Section 3501.32, Revised Code, will have concerning the time for opening and closing of polling places throughout Ohio for the Primary Election to be held May 2, 1967, and the General Election to be held November 7, 1967.

Public Law 89-387 provides in part as follows:

**"AN ACT**

**\*\* \* \* \* \* \*\* \* \* \***

**"Sec. 2. It is the policy of the United States to promote the adoption and observance of uniform time within the standard time zones.  
 \* \* \***

**"Sec. 3. (a) During the period commencing at 2 o'clock antemeridian on the last Sunday of**

April of each year and ending at 2 o'clock ante-meridian on the last Sunday of October of each year, the standard time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261-264), as modified by the Act of March 4, 1921 (15 U.S.C. 265), shall be advanced one hour and such time as so advanced shall for the purposes of such Act of March 19, 1918, as so modified, be the standard time of such zone during such period; except that any State may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if such law provides that the entire state (including all political subdivisions thereof) shall observe the standard time otherwise applicable under such Act of March 19, 1918, as so modified, during such period.

"(b) It is hereby declared that it is the express intent of Congress by this section to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for advances in time or change-over dates different from those specified in this section.

"(c) \* \* \* \* \*

"Sec. 4. (a) The first section of the Act of March 19, 1918, as amended (15 U.S.C. 261), is amended to read as follows:

" That for the purpose of establishing the standard time of the United States, the territory of the United States shall be divided into eight zones in the manner provided in this section. Except as provided in section 3 (a) of the Uniform Time Act of 1966, the standard time of the first zone shall be based on the mean solar time of the sixtieth degree of longitude west from Greenwich; that of the second zone on the seventy-fifth degree; \* \* \*

"(b) Section 2 of such Act is amended to read as follows:

"Sec. 2. Within the respective zones created under the authority of this Act the standard time of the zone shall insofar as practicable (as determined by the Interstate Commerce Commission) govern the movement of all common carriers engaged in interstate or foreign commerce. In all statutes, orders, rules, and regulations relating to the time of performance of any act by any officer or department of the

United States, whether in the legislative, executive, or judicial branches of the Government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not be performed by any person subject to the jurisdiction of the United States, it shall be understood and intended that the time shall insofar as practicable (as determined by the Interstate Commerce Commission) be the United States standard time of the zone within which the act is to be performed.'

"(c) Section 4 of such Act is amended to read as follows:

"Sec. 4. The standard time \* \* \* of the second zone shall be known and designated as eastern standard time; \* \* \*'

\* \* \* \* \* \* \* \*

"Sec. 6. This Act shall take effect on April 1, 1967; \* \* \*

\* \* \* \* \* \* \* \*"

Section 1.04, Revised Code, provides as follows:

"The standard time throughout this state shall be the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich. Courts, public offices, and official legal proceedings subject to the laws of this state shall be regulated thereby. Whenever the time of performance of any act, or the time of accrual or determination of any rights, is fixed or governed by the statutes of this state or by any resolutions, rules, regulations, or orders in effect under authority of such statutes, such time shall be the standard time provided in this section.

"All clocks maintained in or upon public buildings, existing as such under the laws of this state, shall be set and run according to this section."

Section 3501.32, Revised Code, provides as follows:

"On the day of the election the poll

shall be opened by proclamation by the presiding judge, or in his absence by a presiding judge chosen by the judges and clerks, at six-thirty a.m. and shall be closed by proclamation at six-thirty p.m., unless there are voters waiting in line to cast their ballots, in which case the polls shall be kept open until such waiting voters have voted."

No cases were found bearing directly on the constitutionality of Public Law 89-387.

It appears that the action of Congress in passing the law was grounded on Paragraph 5, Section 8, Article I, U.S. Constitution, which provides in part as follows:

"The Congress shall have power to  
\* \* \*fix the Standard of Weights and  
Measures;"

and was further grounded on Paragraph 3, Section 8, Article I, U.S. Constitution, which provides as follows:

"The Congress shall have Power To  
\* \* \*regulate Commerce with foreign Na-  
tions, and among the several States, and  
with the Indian Tribes;"

By the terms of the Constitution certain powers are entrusted to the Federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments. The United States Supreme Court has divided these powers into four classes: (1) those which belong exclusively to the national government, (2) those which belong exclusively to the state, (3) those which may be exercised concurrently and independently by both, and (4) those which may be exercised by the state, but only until Congress shall see fit to act upon the subject. In the latter case the authority of the state is suspended until the occasion for its exercise shall recur. 16 Am. Jur. 2d, Constitutional Law, Section 198.

Any state in the United States could, until such power was exercised by Congress, enact laws concerning the standard of time within such state. Opinion No. 5785, Opinions of the Attorney General for 1943, page 15. My predecessor in that opinion held that Congress had not seen fit to go further than to make such standard time as fixed by it applicable only to (1) the movement of common carriers engaged in interstate and

foreign commerce; (2) to its own officials and departments; and (3) to all acts done by any person under federal statutes, orders and regulations.

However, by the enactment of Public Law 89-357, Congress has, to the extent provided in Public Law 89-357, preempted the field relating to standard time. Section 1.04, Revised Code, establishing the standard time throughout the state to be the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich, is in conflict with Section 3 of Public Law 89-387 which establishes advanced time during the period commencing at 2 O'clock antemeridian on the last Sunday of April of each year and ending at 2 O'clock antemeridian on the last Sunday of October of each year.

There can be no conflict of authority between the laws of a state and of the United States for if the laws of the United States are within the cognizance of the Federal Constitution, they are paramount to any state laws. A state law which contravenes a valid law of the United States is void. 9 O. Jur. 2d, Conflict of Laws, Section 17.

Since the Constitution of the United States provided (Article 6, Section 2) that the laws made in pursuance thereof shall be the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding, an act of Congress constitutionally passed within the limits of its authority becomes a part of the supreme law of the land in connection with the Federal Constitution itself. 16 Am. Jur. 2d, Constitutional Law, Section 53.

It is my conclusion that the operation of Section 1.04, Revised Code, must be suspended to the extent provided in Public Law 87-357.

Accordingly, it is my opinion, and you are hereby advised, that:

(1) The Primary Election to be held on May 2, 1967 will be governed by Public Law 89-387. Public Law 89-387 provides in part that during the period commencing at 2 O'clock antemeridian on the last Sunday of April of each year and ending at 2 O'clock antemeridian on the last Sunday of October of each year, the standard time of each zone established by the Act of March 19, 1918 (15 U.S.C. 261-264), as modified by the Act of March 4, 1921 (15 U.S.C. 265), shall be advanced one hour and such time as so advanced shall for the purposes of such Act of March 19, 1918, as so modified, be the standard time of such zone during such period.

(2) Inasmuch as the election to be held on November 7, 1967 is not during the period commencing at 2 O'clock antemeridian on the last Sunday of April and ending at 2 O'clock antemeridian on the last Sunday of October, the

provisions of Section 1.04, Revised Code, will not be suspended. For the November 7, 1967 election the six-thirty a.m. time and six thirty p.m. time as set forth in Section 3501.32, Revised Code, will therefore be the time as set by Section 1.04, Revised Code.