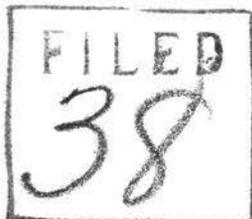


CONSTITUTIONAL LAW:
GENERAL ASSEMBLY:

Under the provision of Section 20(a) of Article III, Constitution of Missouri, the second extraordinary session of the General Assembly would be automatically adjourned sine die on midnight, Friday, April 4, 1958, unless it had adjourned sine die prior thereto.



April 1, 1958

Honorable Warren E. Hearnes
Representative, Mississippi County
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads:

"Section 20A of Article 3 of the Constitution of Missouri states that the General Assembly shall automatically stand adjourned sine die at midnight on the 60th calendar day after the date of its convening in special session, unless it has adjourned sine die prior thereto.

"In determining the proper date for the present special session to adjourn, does this mean that the Second Extraordinary Session which convened on February 3, 1958, must adjourn sine die at midnight on April 3, 1958, or April 4, 1958? It is necessary that we determine this as soon as possible so that we can plan on the necessary closing arrangements."

Section 20a of Article III of the Missouri Constitution more fully provides as follows:

"The General Assembly shall automatically stand adjourned sine die at midnight on the sixtieth calendar day after the date of its convening in special session unless it has adjourned sine die prior thereto."

The precise question presented by your request has not been passed upon by the appellate courts of this state, however, a literal reading of the above constitutional provision would lead

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to the conclusion that the date of the General Assembly's convening in special session would be excluded in computing the sixtieth day, or the date when the General Assembly would automatically stand adjourned sine die, unless it has adjourned sine die prior thereto. This, for the reason that the language chosen by the framers of the Constitution says the sixtieth calendar day "after" the date of the Assembly's convening in special session.

We invite attention to Section 1.040, RSMo 1949, which provides as follows:

"The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day be Sunday it shall be excluded."

This statutory exposition of the common law (so denominated in the case of Hahn v. Dierks, 37 Mo. 574) has been applied in the computation of time under constitutional provision by the Supreme Court of Missouri. See Beaudean vs. City of Cape Girardeau, 71 Mo. 392.

The question presented in the latter case was as to whether or not the Governor had vetoed a bill within the time limited by Section 9 of Article V of the 1865 Constitution. That constitutional provision read, in part:

"If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the Governor had signed it. * * *"

In construing this provision, the court stated at l.c. 397:

" * * * The bill was presented to the governor on the 5th day of February, 1875, and was returned with his veto on the 17th day of February. Not counting the two Sundays which intervened between these periods, they being expressly excepted by the constitution from being counted, and applying the rule of excluding the first and including the last day, as laid down in the cases of Reynolds v. M.K. & T. R.R. Co. 64 Mo. 70, and Hahn v. Dierks,

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37 Mo. 574, the veto of the governor was returned within the time required by the constitution, * * *."

With reference to the word "after" the rule as to the computation of time is stated in 52 Am. Jur., page 352, Section 27, as follows:

"The word 'after' has been given a variety of meanings and applications by the courts, although generally, time 'after' an act is computed by excluding the day on which the event took place. So also, the words 'from and after' ordinarily signify the exclusion of the day from which the reckoning is to be made, except where this construction defeats the purpose of the contract or statute."

The rule is stated in 86 C.J.S., page 851, Section 13 (3) as follows:

"Since the words 'from' and 'after' are generally considered to exclude the terminus a quo, and are usually regarded as terms of exclusion, it is the generally accepted rule that in computing a period of time 'from' or 'after' a certain day or a given date, or from the day of a specified act, the day or date from which the reckoning is made will be excluded and the last day of the period will be included, and in this connection there is at present no distinction in meaning between 'date' and 'day of the date.' * * *"

As to cases from other jurisdictions holding that where a time is to be computed "after" a certain date, the first date should be excluded. See *Lewis vs. Cozine*, 29 S.W.2d 34; *State v. Sessions*, 84 Kan. 856, 115 P. 641; *Holt v. Richardson*, 134 Ga. 287, 67 S.W. 798; *DeForest Lumber Co. vs. Potter*, 251 N.W. 442, 213 Wis. 288.

In view of the foregoing authorities, and in view of the language of the constitutional provision under consideration, it is our opinion that in computing the date on which the Legislature must adjourn sine die the first day of the session, that is February 3, 1958, should be excluded. The sixtieth day thereafter would be Friday, April 4, 1958, and the Legislature would be

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automatically adjourned sine die on midnight of that date, unless it had adjourned sine die prior thereto.

CONCLUSION

Therefore, it is the opinion of this office that under the provision of Section 20(a) of Article III, of the Constitution of Missouri, the second extraordinary session of the General Assembly would be automatically adjourned sine die on midnight, Friday, April 4, 1958, unless it had adjourned sine die prior thereto.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Very truly yours,

John M. Dalton
Attorney General

DDG:mw:hw