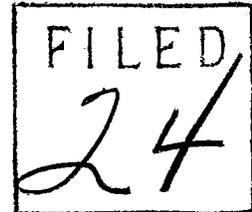


GOVERNOR: Time within which to approve or disapprove bills in his hands at the time of adjournment of the Sixty-first General Assembly.

August 4, 1941

Honorable Forrest C. Donnell  
Governor of the State of Missouri  
State Capitol Building  
Jefferson City, Missouri



Dear Governor Donnell:

The Senate Journal of the proceedings had on July 12, 1941, the one hundred thirty-third legislative day of the Senate, reflects the following:

"Senator Searcy moved that, under the terms of House Concurrent Resolution No. 27, the hour of adjournment having arrived, the 61st General Assembly do now adjourn sine die.

"Which motion prevailed.

"The President declared the Senate of the 61st General Assembly, convened in regular session on January 8, 1941, adjourned sine die.

Frank G. Harris,  
President of Senate

R. E. L. Marrs,  
Secretary of Senate."

The House Journal of the proceedings had on July 12, 1941, the one hundred thirty-seventh legislative day of the House, reflects the following:

"Mr. Lauf moved, that under the terms of the resolution, the hour of adjournment having arrived, the Sixty-First General Assembly do now adjourn sine die.

"Which motion prevailed.

"The Speaker declared the House of Representatives of the Sixty-First General Assembly, convened in regular session on January 8, 1941, adjourned sine die.

Morris E. Osburn,  
Speaker of the House

Joseph A. Bauer,  
Chief Clerk."

It is clear from the above recitals, which are conclusive (Cox v. Mignery & Co., 126 Mo. App., l. c. 679; 59 C. J., Sec. 198, p. 634), that the Sixty-first General Assembly adjourned sine die, July 12, 1941.

On this day you advise that certain bills were in your hands for approval or disapproval, said bills having been placed with you within the ten days preceding adjournment and which had not been approved or disapproved on July 12, 1941. In view of this, you ask when the time will expire within which you may approve or disapprove any such bills.

Article V, Section 12, of the Constitution of 1875 is as follows:

"The Governor shall consider all bills and joint resolutions, which, having been passed by both houses of the General Assembly, shall be presented to him. He shall, within ten days after the same shall have been presented

to him, return to the house in which they respectively originated, all such bills and joint resolutions, with his approval indorsed thereon, or accompanied by his objections: Provided, That if the General Assembly shall finally adjourn within ten days after such presentation, the Governor may, within thirty days thereafter, return such bills and resolutions to the office of the Secretary of State, with his approval or reasons for disapproval."

Only that part of the section following the proviso is pertinent to this question, and our research does not disclose any case in this state which has dealt with the above provision. However, the Constitution of 1865 contained a similar provision. Article V, Section 9, of the Constitution of 1865 is as follows:

"Every bill which shall have been passed by both houses of the general assembly before it becomes a law, shall be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated; and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill. After such reconsideration, if a majority of all members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall, in like manner, be reconsidered; and if approved by a majority of all the members elected to that house, it shall become a law. In all such cases the votes of both houses shall be taken by yeas and nays, and the names of the members voting for and against the bill

shall be entered on the journals of each house respectively. 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, unless the general assembly, by its adjournment shall prevent its return; in which case it shall not become a law, unless the governor, after such adjournment, and within ten days after the bill was presented to him (Sundays excepted), shall sign and deposit the same in the office of the secretary of state; in which case it shall become a law, in like manner as if it had been signed by him during the session of the general assembly."

Beaudean v. The City of Cape Girardeau, 71 Mo. 392, was an action for damages resulting from the obstruction of a highway by the City of Cape Girardeau. That action to some extent depended on whether the obstruction was within or without the city limits of Cape Girardeau. The proof on this question consisted of the Journal of the Senate at the 1875 Session showing the date upon which the Governor vetoed a certain bill, changing the corporate limits of said city, which bill would have excluded from the corporate limits the highway in question. It was contended by the defendant city that said bill was not returned by the Governor within the ten days allowed, and that, therefore, it became a law without his signature. In commenting on the validity of this veto, the court stated, 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,

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

\* \* \* \* "

This case deals with that part of the 1865 Constitution that is comparable to the second sentence of Article V, Section 12, of the 1875 Constitution, but we see no reason why the method laid down as to the computation of time under that provision should not apply to the provision in question here. The rule laid down in Beaudean v. The City of Cape Girardeau is that followed in numerous other jurisdictions as may be seen by reference to the annotation appearing in 54 A. L. R. 339, et seq.

Applying the above rule, we see that by excluding July 12th, the thirty day period allowed expires at the end of the day of August 11, 1941. It is therefore our opinion that on bills passed by the Sixty-first General Assembly, which were in the hands of the Governor and not yet approved or disapproved on the date of adjournment, the time in which the Governor may act with reference to giving his approval or disapproval expires August 11, 1941, at midnight.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK  
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LLB:VC