

GOVERNOR: Time when the Governor shall approve or reject a bill which has been presented to him by the General Assembly.

August 11, 1941.

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



Dear Governor Donnell:

This is in response to your request for an official opinion from this department on the following question:

"A bill is passed by the General Assembly and delivered to the Governor on June 5, 1941. By virtue of Section 12, Article V, the Governor is required to approve or reject a bill within ten days following its presentation to him. The question is: On what day does the ten day period end?"

If the statutory rules of construction are applicable here, then the following rule would be used in determining the time when a bill should be approved or rejected by the Governor. Section 655 R. S. Mo. 1939:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: * * * fourth, 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 question will be answered when it is determined whether or not the same rules of construction shall apply to constitutional provisions as applies to statutory provisions in this state. We think our courts have answered this in the affirmative. In Vol. 12, C. J., page 699, Section 42, the rule is stated as follows:

"In the main, the general principles governing the construction of statutes apply also to the construction of constitutions. It must not be forgotten, however, that the function of a constitution is to establish the framework and general principles of government; and merely technical rules of construction are not to be applied so as to defeat the principles of the government or the objects of its establishment."

We further think that the statement of the court in Hahn et al. vs. Dierkes et al., 37 Mo. 574 is pertinent to this question because it shows that the provisions of Section 655, heretofore referred to, were brought down from the common law:

"As to how time shall be computed, is a matter which has been litigated ever since the existence of the common law. In the computation of the period of time, the contest has generally been, which day shall be included and which excluded; but it would be difficult to extract any uniform rule from the jarring and conflicting decisions on the question. Our statute, to put all doubt at rest and insure certainty, has declared, that the time within which an act is to be done, shall be computed by excluding the first day and including the last-- R. C. 1855, p. 1027, Section 22. This is a statutory exposition of the common law, and necessarily leads to the exclusion of the first day. * * *"

Our Supreme Court in *State ex rel. v. Imel*, 242 Mo. 293, announced this rule and followed it in that case, wherein the court stated:

"* * * 'The established rules of construction applicable to statutes also apply to the construction of Constitutions.' (8 Cyc. 729.)"

The Circuit Court of Appeals of the 8th Circuit for the District of Minnesota, in the case of *Badger v. Hoidale*, 88 Fed. (2d) 208, 211, in discussing the rules on constitutional construction, said:

"* * * Rules applicable to the construction of a statute are equally applicable to the construction of a Constitution. * * *"

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,

August 11, 1941.

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 *Beauden 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.

CONCLUSION

We are, therefore, of the opinion that the statutory rules of construction for fixing time, particularly subdivision 4 of Section 655 R. S. Mo. 1939, would be the rule under which the time for approving or rejecting a bill under Section 12, Article 5 would be fixed, that is, you would exclude the first day and also the last day if the last day for approving the bill falls on Sunday. That being the case, June 16th would be the date that the ten day period would expire for the Governor to approve or reject the bill which had been delivered to him on June 5, 1941.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney General

APPROVED:

TYRE W. BURTON
Assistant Attorney General

VANE C. THURLO
(Acting) Attorney General