

GOVERNOR: If last day on which Governor may act on legislation falls on Sunday, the following Monday is to be considered as last day.

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



Dear Governor Donnell:

You have requested our opinion on the following matter:

"A bill is passed by the General Assembly and presented to the Governor for his action; the last day of the time set for his action, as provided by Section 12 of Article V of the Constitution, falls upon Sunday. Is Sunday to be included in determining the period within which he must take action?"

The case of *Beaudean v. The City of Cape Girardeau*, 71 Mo. 392, was one involving computation of the time within which the Governor could act on legislation presented to him by the General Assembly. In that case the court stated, l. c. 397:

"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. Dierkes, 37 Mo. 574,
the veto of the governor was re-
turned within the time required by
the constitution, * * *"

It will be noted that in the Beaudean case the court cites as authority for applying the rule of excluding the first day and including the last, two cases. The first of those cases involved the time within which the defendant had to move to set aside a default judgment and the court held that it was to be computed by excluding the first day and including the last. The second of those cases involved the computation of time within which notice of a mechanics lien was to be given and the court applied the rule of excluding the first day and counting the last. In each of these cases the court expressly relies for its authority upon the terms of what is now Section 655, R. S. Mo. 1939, which provides:

"* * * 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; * * *"

It is therefore to be seen that in the Beaudean Case the court considered that the terms of the above statute were controlling in computing the time within which the Governor must return a bill presented to him by the General Assembly, at least to the extent of excluding the first day and including the last day. It will be noted that the statutory rule further provides that if the last day falls on Sunday it also shall be excluded, which, in effect, would make the following Monday the last day.

We find no Missouri case which has undertaken to apply this rule to the question presented here. However, in the case of In Re Senate Resolution Relating to Senate Bill No. 56, 21 Pac. 475 (Colo.), that precise question was presented. The Constitution of Colorado allowed the Governor

ten days within which to return a bill after it had been presented to him by the General Assembly. On Senate Bill No. 56 in the Colorado case, the tenth day fell on a Sunday. The court in ruling whether or not the Governor had until the following Monday to approve the bill, said:

"When the law requires an act to be performed within a given number of days from a day mentioned, or from the performance of a certain act, the rule of computation adopted by this court, and sanctioned by the weight of authority on the subject, is to include one of the two days mentioned, and to exclude the other. In accordance with this rule, the bill having been presented to the governor for his signature on March 17th, it would be returnable to the senate on March 27th, unless by the happening of some event, or the intervention of some other principle of construction, the return should be postponed to a subsequent day.

"In certain commercial transactions, as in the presenting for payment or acceptance, or in the protesting and giving notice of dishonor, of bills of exchange, promissory notes, and bank-checks, if the day upon which the act is to be performed falls upon Sunday, by statute and by usage the instruments mature, and the act must be performed, on the day previous. But a different rule obtains as to administrative and judicial acts. If the return-day of a writ, the completion of service by publication, or the day upon which a court is to sit, whether by adjournment thereto or otherwise, falls upon Sunday, the return-day or court-day is continued, and

becomes the Monday succeeding, unless the same should be a legal holiday. In the latter class of cases there can be no curtailment of the full period of time allowed by law. The intervention, however, of Sunday, or of a legal holiday, between the first and last days of the prescribed period, is not to be noticed, unless said day or days is or are expressly excepted by the law itself. The constitutional provision in question does not exclude Sunday from the 10 days allowed the governor for consideration and return of bills presented to him by the general assembly. If, therefore, Sunday had intervened between the days of presentation and the return-day of this bill, it would have legally constituted one of the 10 days. It happened, however, that the return-day, March 27th, fell upon Sunday, and, the general assembly not being in session upon that day, no opportunity was afforded to the governor to communicate with that body. Having, by virtue of the constitutional provision, 10 days within which to return the bill, it follows from reason and principle that the return-day was continued by operation of law until Monday, March 28th."

The similarity between the Colorado case and the question you present is striking in that the Colorado Constitution, like that of Missouri, did not except intervening Sundays and the court there gave application to the rule usually used in connection with ordinary business transactions, though it does not appear that such was based on a statute. Thus it appears that the courts in Missouri have held Section 655, supra, applicable in construing Section 12 of Article V

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of the Constitution in so far as it applies to the computation of time by excluding the first day and including the last. We see no reason why the same statute does not control in excluding the last day if it falls on Sunday. The Colorado case, above cited, gives judicial sanction to that rule.

Conclusion

It is, therefore, our opinion that in determining the time within which the Governor may act on legislation presented to him by the General Assembly, that if the last day set for his action falls on Sunday it is to be excluded and the following Monday considered as the last day.

Respectfully submitted,

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