

CRIMINAL LAW: Effective date of Section 563.374, Mo. R.S. Cumulative
EXPOST FACTO: Supplement 1951, 90 days subsequent to adjournment of
STATUTES: 66th General Assembly on April 30, 1952. Conviction for
an offense prior to effective date of statute convicted
under is invalid.

April 4, 1953

F I L E D

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Honorable Edward L. Dowd
Circuit Attorney for the
City of St. Louis
St. Louis, Missouri

Attention: George W. Draper II, Assistant Circuit Attorney

Dear Sir:

This will acknowledge receipt of your request for an
opinion, which reads:

"On February 19, 1953, one Robert Harris Jr.
was found guilty of possession of gaming
devices under Chapter 563.374, of the Missouri
Revised Statutes cumulative supplemental
1951, and sentenced to a year in the City
Workhouse and a one thousand dollar fine.

"This defendant was arrested May 30, 1952, by
the St. Louis Police, and at that time certain
gambling paraphernalia was found on his person.

"The defendant's attorney has filed motion for
a new trial under which he claims that Section
563.374 did not become effective as a law
until 90 days after April 30, 1952. Therefore,
it is his contention that the Court did not
have jurisdiction to give the jury an instruction
of this section of the statute.

"In reading the aforementioned section, this
writer notes that it was sent to the Governor
on March 11, 1952, and approved by the Govern-
or on March 24, 1952. However, there is
nothing in the statute to indicate the date
that it was passed by the Legislature.
Furthermore, it is noted that although laws
passed by the Legislature prior to its
adjournment on April 30, 1952, did not ordin-
arily become effective until 90 days after
the adjournment of the Legislature that cer-
tain resolutions were adopted by the Legis-
lature for the recess beginning December

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1951 and January 22, 1952, and that these resolutions specified that laws previously passed should become effective on March 18, 1952, and April 22, 1952, respectively.

"The problem that this writer is confronted with is whether or not Section 563.374 was passed by the Legislature prior to January 22, 1952, and if so, did the resolutions passed by the Legislature making said bills laws and effective on March 18, 1952, and April 22, 1952, respectively apply to this section. In other words, the question that I am directing to you is when did this Section 563.374 become law here in the State of Missouri insofar as to make the punishment of one year in the City Workhouse and a one thousand dollar fine applicable.

"Would you please advise as soon as possible, for said motion is to be heard within the next week. Further, it will be appreciated if you can forward to me any data which you feel will aid me in arguing this motion."

Section 29, Article III, Constitution of Missouri, provides in part that if the General Assembly recesses for thirty days or more it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of such recess.

The first question to determine is how to construe the words used hereinabove "laws previously passed." The Supreme Court in *State v. Toberman*, 250 S.W. (2d) 701, l.c. 704-705 (1) (2), held that such words cannot be limited to laws passed by the General Assembly and approved by the Governor. Therefore, in order for a bill to come within the foregoing constitutional amendment, it must have passed both bodies of the General Assembly, and it is not necessary that the Governor must have approved said bill prior to the adoption of the joint resolution as provided in said constitutional amendment. In so holding the court said:

"(1) The phrases 'law passed by the general assembly' and 'laws previously passed', as used in §29, cannot be limited to laws passed by the general assembly and approved by the governor. The governor is no part of

the general assembly. The Constitution, §1, Art. III, expressly states: 'The legislative power shall be vested in a senate and house of representatives to be styled "The General Assembly of the State of Missouri."' Thus only the general Assembly passes laws. When it has passed a bill, if that word is preferred, the bill is a law insofar as the legislative power is vested in the general assembly to make it so; and we think that is the clearly intended meaning of the word 'law' as used in the aforesaid phrases of §29.
* * * * *

"(2) The fact that the governor did not approve the bill until after the beginning of the recess does not arrest its becoming effective ninety days after the beginning of the recess if he signed it within forty-five days thereafter, which he did. * * *"

S.C.S.S.B. 226 passed by the Sixty-sixth General Assembly was reported enrolled in the Senate on March 10, 1952, signed by the President of the Senate on March 11, 1952, and was sent to the Governor on the same day. Said bill was approved by the Governor on March 24, 1952.

The last concurrent resolution introduced in the Sixty-sixth General Assembly for a recess was S.C.R. 13. (See Laws of Missouri 1951, pages 891-892.) Said resolution provided for a recess beginning January 22, 1952, ending February 25, 1952, and it resolved that all laws passed by said General Assembly on or before the 22nd day of January, 1952 shall take effect and be in force on the 22nd day of April, 1952.

Section 29, Article III, Constitution of Missouri 1945, provides in part that no laws passed by the General Assembly shall take effect until ninety days after the adjournment of the session at which it was enacted, with certain exceptions that are not applicable in the instant case.

In view of the foregoing resolution and constitutional amendment and the further fact that said bill was passed on March 11, 1952, subsequent to January 22, 1952 and in view of the fact that it was approved by the governor on March 24, 1952, said bill could not have become effective until ninety days after adjournment of the Sixty-sixth General Assembly which happened on April 30, 1952. (See Laws of Missouri 1951, page 889.)

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Section 13, Article I, Constitution of Missouri, provides that no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted. The decisions hold that an act of the Legislature must be held to operate prospectively only, unless a different legislative intention is clearly to be gathered from their terms.

An ex post facto law is one which makes an action done before the enactment of a statute penal or criminal, which was innocent when committed or which aggravates a crime by making it greater than when committed or inflicts a greater punishment than existed when the offense was committed. (See State ex rel. vs. Works, 249 Mo. 702, 156 S.W. 967.)

The term "ex post facto" as used in the Constitution has reference to crimes and their punishment, and the term "retrospective" as used refers exclusively to a law related to civil rights and remedies. (See ex parte Betherm, 66 Mo. 545.)

Under the foregoing constitutional amendment and decisions to apply the provisions of S.C.S.S.B. 226 passed by the Sixty-sixth General Assembly, especially Section 1 thereof, known as Section 563.374, Revised Statutes of Missouri, Cumulative Supplement 1951, to such an offense committed prior to January 22, 1952, and long prior to said law becoming effective would be in fact an attempt to convict one on an ex post facto law and illegal.

CONCLUSION.

In view of the foregoing, it is the opinion of this department that the effective date of Section 563.374, Revised Statutes of Missouri, Cumulative Supplement 1951, is ninety days after adjournment of the Sixty-sixth General Assembly on April 30, 1952. Furthermore, in view of the fact that the offense in the instant case was committed prior to the effective date of Section 563.374, supra, the sentence is invalid.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARH:sw