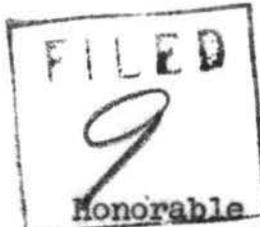


GENERAL ASSEMBLY:
CONSTITUTION:
STATUTES:

When a bill is finally passed by both houses of the General Assembly and approved by the governor, the constitutionality of the resulting law cannot be successfully challenged on the ground that the presiding officer of the Senate failed to sign the bill.



June 17, 1957

Honorable James T. Blair, Jr.
Governor of Missouri
Jefferson City, Missouri

Dear Governor Blair:

This refers to your letter of June 11, 1957, requesting a formal opinion of this office, which letter reads as follows:

"There have been presented to me for my consideration and action certain bills which were passed by both Houses of the General Assembly, but which were not signed by the presiding officer of the Senate. These bills are

H.C.S.H.B. No. 10
H.B. No. 207
H.B. No. 208
H.B. No. 288
H.B. No. 442
H.B. No. 570
H.B. No. 364
H.B. No. 77

"Your opinion is requested with respect to the question whether, in the event that I approve such bills, the fact that they were not signed by the presiding officer of the Senate will cause them not to be validly enacted laws."

The question presented by you arises by reason of provisions of Section 30 of Article III of the Constitution of Missouri with respect to the signing of bills by the presiding officer of each house of the General Assembly. This section of the Constitution, and Section 31, which must be considered with it, read as follows:

"Section 30. Signing of bills by presiding officers - procedure on objections - presentation of bills to governor.- No bill shall become a law until it is signed by the presiding officer of each house in open session, who first shall suspend all other business, declare that the bill

Honorable James T. Blair Jr.

shall now be read and that if no objection be made he will sign the same. If in either house any member shall object in writing to the signing of a bill, the objection shall be noted in the journal and annexed to the bill to be considered by the governor in connection therewith. When a bill has been signed, the secretary, or the chief clerk, of the houses in which the bill originated shall present the bill in person to the governor on the same day on which it was signed and enter the fact upon the journal."

"Section 31. Governor's duty as to bills and joint resolutions - time limitations.- All bills and joint resolutions passed by both houses shall be presented to and considered by the governor, and within fifteen days after presentation he shall return them to the house of their origin endorsed with his approval or accompanied by his objections. If the bill be approved by the governor it shall become a law. When the general assembly adjourns, or recesses for a period of thirty days or more, the governor may return within forty-five days any bill or resolution to the office of the secretary of state with his approval or reasons for disapproval."

While somewhat similar questions have been considered by courts in other states, we believe that our opinion in this matter must be based entirely upon the views expressed by the Missouri Supreme Court en banc in its opinion in the case of *Brown v. Morris*, 290 SW2d 160, decided in 1956. In that case, the constitutionality of the law providing for the cigarette tax was challenged on the ground that the Speaker of the House of Representatives had refused to sign the bill which resulted in such law. That bill had provided for its submission to the voters of the state at a referendum election, and the bill had been approved at such election before the suit was filed.

The precise decision of the Supreme Court was that the failure of the Speaker to sign the bill was a procedural defect or error which had been cured by the approval of the voters at the referendum election. However, in its opinion, the court discussed in considerable detail the question whether the constitutional provision with respect to signature by the presiding officer was mandatory or directory, and concluded that it was directory only.

After referring to decisions in other states, the court stated:

Honorable James T. Blair, Jr.

"* * * Extended discussion of these cited cases is unnecessary, however, because of material changes made by the 1945 Constitution in the legislative article. Old § 38, Art. IV, provided that 'When the bill has been signed [by the presiding officers], as provided for in the preceding section' it shall be presented to the governor and if approved by him it 'shall become a law.' The revised section, now § 31, Art. III, provides: 'All bills and joint resolutions passed by both houses' shall be presented to the governor and when approved by him 'shall become a law.' (Emphasis ours.) It will be noted that the language 'passed by both houses' has been substituted for 'when the bill has been signed' as a prerequisite for presentation of the bill to the governor for consideration.* * * *

"Thus it affirmatively appears from § 31 of Art. III of the present constitution that passage of a bill by the general assembly plus its approval by the governor produces a validly enacted law.* * * What constitutes final passage of a bill is defined by § 27 as follows: '* * *, nor shall a bill be finally passed, unless a vote by yeas and nays be taken and a majority of the members elected to each house be recorded as voting favorably.' It will be noticed that this definition of passage does not include signing by the presiding officers.

"We should undertake to harmonize and give effect to all constitutional provisions, but in doing so we cannot read into § 31 the requirement of § 30 that the bill be signed by the presiding officer because in so doing we would be restoring to the section a provision which was specifically eliminated when the new constitution was adopted.* * *"

At another place in its opinion, the court stated:

"Section 31 clearly provides that constitutional requirements for action by the legislative body have been met when a bill has 'passed both houses' of the general assembly. The bill is then ready for consideration by the executive or the voters on referendum. Section 31 is a complete formula and its provision that a bill shall become a law when its terms are satisfied is positive and mandatory. If § 30 is

Honorable James T. Blair, Jr.

construed to mean that signing by the presiding officer is also mandatory and the sine qua non of a valid bill, then a conflict with § 31 would exist."

The court then went on to explain why it believed that the provision of Section 30, with respect to signing by the presiding officers, should not be considered mandatory and, therefore, in conflict with the provisions of Section 31. In this connection, the court pointed out that the only purpose of the signatures, namely, authentication of bills, can be otherwise accomplished. With respect to this, the court stated:

"Section 31 makes it clear that the indispensable step is final passage and it follows that if a bill, otherwise duly enacted as a law, is not attested by the presiding officer, other proof that it has 'passed both houses' will satisfy the constitutional requirement. Sutherland Statutory Construction, 3rd Ed., Vol. I, p. 221, § 1304, advances this reasoning as to the function and necessity of the signature of the presiding officer: 'In sum the signature of the presiding officer is only a certificate to the governor that the bill has passed the requisite number of readings and has been adopted by a constitutional majority of the house over which he presides. If this information is available to the governor and to the courts by journals which are recognized admissible in evidence, the procedural protections set by the constitution have been complied with, and the bill should be enforceable as a properly enacted statute.'

"In Missouri, legislative journals are not only admissible in evidence but the courts may judicially notice the history of legislation as reflected by the record thereof in the legislative journals. State ex rel. Karbe v. Bader, 336 Mo. 259, 78 S.W.2d 835. It is quite apparent that neither the governor nor the courts are dependent upon the certificate of the presiding officer. They may determine from the legislative journals whether a bill has 'passed both houses.' * * *"

Without quoting further from the court's opinion, the views expressed therein may be briefly summarized as follows: The constitutional requirement for signature by the presiding officers of the House and Senate is directory, rather than mandatory; the only purpose of the requirement is to provide a mode of authentication

Honorable James T. Blair, Jr.

evidencing the fact that a particular bill has been passed in due form by the legislative body involved; in the absence of signatures, other proof of passage will satisfy the requirement and such proof may be provided by the legislative journals; and the only requirements for a valid law are final passage of a bill by the House and Senate (which does not include signature by the presiding officers) and approval by the governor or by the voters on referendum.

While the situation now presented differs somewhat from that in *Brown v. Morris* because no referendum is involved, it is believed that, in the light of the views so recently expressed by the Supreme Court in that case with respect to the pertinent constitutional provisions and the nature of the requirement with respect to signatures by the presiding officers, it must be concluded that, in the event you approve the bills in question, their constitutionality could not be successfully challenged because the presiding officer of the Senate failed to sign them.

CONCLUSION

It is the opinion of this office that, when a bill is finally passed by both houses of the General Assembly and approved by the governor, the constitutionality of the resulting law cannot be successfully challenged on the ground that the presiding officer of the Senate failed to sign the bill.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Baumann.

Very truly yours,

John M. Dalton
Attorney General

JCB/ld