

The State of South Carolina



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The Honorable Carroll A. Campbell, Jr.
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Dear Governor Campbell:

You have asked a number of questions relative to the Governor's approval or disapproval of bills after sine die adjournment of the General Assembly. Particularly, you have inquired as follows:

... What is the effect of a bill not signed by the Governor until some date after the five day period has expired and after sine die?

... What is the effect of a bill signed by the Governor after sine die but before the five day period has expired?

... What is the effect of a bill signed by the Governor after sine die and after the five day period has expired?

Article IV, Section 21 of the South Carolina Constitution (1895 as amended) provides as follows:

Every bill or joint resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approves he shall sign it; if not, he shall return it, with his objections, to the house in which it originated,

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which shall enter the objections at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of that house it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both houses shall be taken by yeas and nays, and the names of the persons voting for and against the bill or joint resolution shall be entered on the Journals of both houses respectively.

....

If a bill or joint resolution shall not be returned by the Governor within five days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting.

Article IV, Section 21 clearly gives the Governor five days to approve or return a bill or joint resolution upon receipt with his objections to it. If the bill is not returned within the five day period "it shall have the same force and effect as if he had signed it" However, the constitutional provision makes an exception if by adjournment of the General Assembly, the Governor is prevented from making return of a bill. In such circumstance, the bill "shall have such force and effect unless returned within two days after the next meeting."

Nothing in Article IV, Section 21 prohibits the Governor from approving a bill after sine die adjournment. In fact,

[t]he general rule adopted by the majority of the country which have considered the question is that the approval by the executive of a bill passed by Congress

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or a state legislature is not a legislative question in the sense that such approval may not be given after final adjournment of the Congress or of the legislature, and that in the absence of express constitutional prohibition, the mere fact that at the time the executive signs a bill, the Congress or state legislature has already adjourned, will not necessarily prevent the bill becoming a law.

64 A.L.R. 1468 (1930). This issue is further elaborated upon in the Mississippi case, State v. Coahoma County, 64 Miss. 358, 1 So. 501 (1887), a case construing a constitutional provision similar in pertinent part to South Carolina's. There, the court stated:

... A time is prescribed by the Constitution in which the Governor may return a bill with his objections. That time is five days during the session of the legislature, and the whole interval between adjournment and three days after the next meeting of the legislature [in the case of South Carolina, two days] in case of bills presented to the governor within five days of the adjournment of the legislature. No time is prescribed by the Constitution in which the governor shall sign if he approves. Manifestly, as he may return with objections in five days during the session, he may sign any day during that time, and as he may return with his objections within three days after its next meeting, in case the legislature by adjournment prevented its return (after the time for consideration and before adjournment) during its session, he may sign the bill any day during the period allowed him in which to return it. Why should the validity of the act of the governor in signing a bill depend on his performance of it while the legislature is in session? ... The finishing act by which a bill is transformed into a law is the governor's approval as shown by his signing, and that may be as long as he

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has the bill in his hands for his official action. So long as he may return it with his objections, he may convert the bill into a law by his approval and signing. (emphasis added).

Moreover, in an opinion of this Office, dated June 14, 1982, former Attorney General, Daniel R. McLeod reached the same conclusion. In that opinion, he stated that "when the General Assembly adjourns sine die before the Governor's time to return a bill not approved (vetoed) has expired, he shall have two days after the beginning of the next 'regular session' to return the bill," Thus the answer to the foregoing questions you have raised is that the Governor may sign a bill received by him within five days of sine die adjournment at any time until the two days after the next meeting of the General Assembly has expired. Compare, Arnette v. Meredith, 275 Ky. 223, 121 S.W.2d 36 (1938); Capito v. Topping, 65 W.Va. 587, 64 S.E. 845 (1909).^{1/} It is also clear that in such circumstances, following sine die adjournment until the expiration of two days following the General Assembly's return, a bill can only become law by signature of the Governor (except as to the Appropriations Bill, discussed below). State v. Coahoma County, supra; Robey v. Broersma, 29 A.2d 827 (Md. Appl 1943); Darling v. Boesch, 67 Iowa 702, 25 N.W. 887 (1885).

You have asked the following additional questions:

... What is the effect of a bill vetoed after sine die but before the five-day period has expired?

... What is the effect of a bill vetoed after sine die and after the five-day period has expired (but before the two-day period into the next Session)?

We note at the outset that the question of whether the Governor can enter his veto to legislation after sine die adjournment and the effect of such a veto prior to reassembly of the legislature is, in most instances, merely academic. As noted above, ordinarily, a bill can only become law

^{1/} These cases conclude that the constitutional provisions in those states requiring the Governor's action with a special time deadline following adjournment is mandatory and in the absence of such action, the bill became law.

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during this interim upon signature of the Governor. Thus, so long as the Governor does not sign a bill following sine die adjournment it does not become law until the expiration of two days after the next meeting of the General Assembly.

These two additional questions raised by you are answered by the opinion rendered by former Attorney General McLeod, cited above. There, Attorney General McLeod, citing several South Carolina decisions, concluded:

The result from these cases is that a bill cannot be "reconsidered" by each House because the General Assembly adjourned before the Governor "returned" the bill, remains ineffective until the "next session" when he has two days to return it. Therefore, because a bill does not become an Act until approved by the Governor, or his veto is overridden by both Houses, a vetoed bill is without effect until the veto is overridden. State v. Jones, 99 S.C. 89, 82 S.E. 882 (1914). If a bill is "returned" in the "next session" and becomes law, it is fully effective, Arnold v. McKellar, supra. If it were an item in the appropriations bill, the amount appropriated could be expended in the remaining part of the fiscal year for which it was appropriated.

The foregoing opinion, rendered by former Attorney General McLeod remains the opinion of this Office. We further advise that the 1982 opinion is consistent with an earlier opinion of this Office. Op. Atty. Gen. May 9, 1911. The 1911 opinion, which appears to be the first official ruling upon this issue subsequent to the adoption of the 1895 Constitution, concludes that "[the Governor] may approve at any time during the year when the Legislature is not in session, and upon such approval [the bill] becomes law."

We have been urged in very able arguments to overrule Attorney General McLeod's 1982 opinion. Reference has been made to the South Carolina Constitution of 1868, Article III, Section 22, particularly the last sentence of the provision. In contrast to the language of the corresponding provision in the 1895 Constitution, the 1868 provision includes the word "not" in the phrase that addresses the effect of adjournment prior to the expiration of the

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time prescribed by the Governor to return a bill. The argument presented is that the 1895 Constitution intends that bills passed by the General Assembly that are not presented to the Governor until after sine die adjournment become law without the approval of the Governor, at least in the interim until the General Assembly next convenes in regular session.

We are not persuaded that the 1982 opinion is incorrect. First, the 1982 opinion has been accepted and relied upon by the General Assembly and the Governor for the past ten years and, as we understand, its conclusions reflected the practice accepted and followed even prior to 1982. Second, although the language of the constitutional provision might, at first glance, appear to be susceptible to various interpretations, we are convinced that the most appropriate interpretation is the one that affords the Governor his constitutional legislative province. The delay in presentment of the bills until after adjournment was not caused by the Governor. And should we adopt a contrary interpretation, the result would be that many bills would become law without review by the Governor. Again, we do not believe that this was the intent of the change in the language. Third, the language of the present constitutional provision clearly supports the 1982 opinion; particularly, its conclusion that subsequent to sine die adjournment a bill may become law only upon signature of the Governor. See authorities, Ante, p. 4. The last phrase of the current constitutional provision is applicable only to determine the legal effect of those bills that the Governor does not expressly approve nor veto between sine die adjournment and the next regular session and to provide for the return of disapproved bills. The current language, in contrast to the previous language, supports a reading that unsigned bills become law two days after the convening of the next regular session of the General Assembly unless returned by the Governor. 2/

2/ We have attempted, without great success, to locate any statements of policy or intent regarding the pertinent portion of either the 1868 Constitution or the version as amended in 1895. Even so, it is apparent from the language of the document that the 1868 framers of the Constitution were of the view that there should be no so-called "pocket" approval after sine die adjournment of the

Appropriations Bill

The Constitution of 1895 for the first time gave the Governor the "line item veto" with respect to bills appropriating money. The pertinent portion of Article IV, Section 21 is as follows:

... Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections. If the Governor shall not approve any one or more of the items or

2/ Continued from Page 6

General Assembly; in other words, upon sine die adjournment, unless there was a "return" by the Governor of any Bill submitted to him within three days of sine die adjournment, such Bill would not become law. See, Arnold v. McKellar, 9 S.C. 325 (1878).

Clearly, however, the framers of the 1895 Constitution sought a different approach. An earlier draft of the present version read: "If any bill shall not be returned by the Governor within two days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment, prevent its return, in which case it shall not have such force and effect until after the expiration of two days from their next meeting and the same being unreturned." It is apparent this more cumbersome version sought the same result as the final version did: the "such force and effect" referred to the Bill becoming law by the Governor's inaction ("as if he had signed it"). The drafter of this earlier version wanted to insure that a Bill did not become law in this manner after sine die adjournment until the expiration of a certain time period upon the General Assembly's return. Ultimately, this objective of the 1895 framers was satisfied simply by removing the word "not" from the 1868 Constitution. In contrast, then, to 1868, the framers in 1895 apparently wished to give consistency to the treatment of bills presented to the Governor during the session, and those presented to him at the very end of the session or even after sine die adjournment by allowing a certain period for the Governor to "return" a bill; in the absence of such "return", the Bill became law.

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sections contained in any bill appropriating money, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the bill with his objections to the items or sections of the same not approved by him to the house in which the bill originated, which house shall enter the objections at large upon its Journal and proceed to reconsider so much of the bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is provided in case of an entire bill returned by the Governor with his objections; and if any item or section of the bill not approved by the Governor shall be passed by two-thirds of each house of the General Assembly, it shall become a part of the law notwithstanding the objections of the Governor.

It is our understanding that, historically, the Governor has often not affirmatively signed the Appropriations Act, but instead the Bill has taken effect by operation of law upon the Governor's objecting to one or more items or sections of the Bill. Moreover, especially in recent years, because of delay in presentment the veto of particular sections of the Bill has, by necessity, occurred after sine die adjournment of the General Assembly. See, e.g., 1991 Act No. 171, p. 1480. [Wherein [the Act] "became law without the signature of the Governor ... unless otherwise stated, provisions not vetoed by the Governor took effect June 12, 1991." There, the Governor vetoed portions of the Bill on 6/12/91, after the June 6 sine die adjournment and these vetoes were formally received by the House on September 23.]

The operative language of the pertinent portion of Article IV, Section 21 authorizes this past practice by the Governor of vetoing certain portions of the Appropriations Bill and the remainder thereof becoming law, because not specifically vetoed. The pertinent language states that if the Governor not approve a particular item, "but shall approve of the residue thereof", then the residue is to become law "as if he had signed it". This express language clearly contemplates that the portions of the Appropriations Act not vetoed clearly become law without the necessity of a signature of the Governor, in accord with past practice in this

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State. See, 1992 South Carolina Legislative Manual, p. 12; 1986 South Carolina Legislative Manual, p. 10. See, State v. Jones, 99 S.C. 89, 82 S.E. 882 (1914); Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960). A contemporaneous construction of this practice is in accord. See, The State, (Columbia, S.C.) September 21, 1895, p. 4 [This provision "enables the Governor to veto an item in an appropriation bill without jeopardizing the remainder."]

As earlier referenced, Attorney General McLeod's opinion makes it clear that sine die adjournment of the General Assembly does not prevent the Governor from vetoing legislation following sine die adjournment, and such veto being fully effective unless not subsequently returned within two days of the next meeting or unless subsequently overridden by the General Assembly. The earlier opinion reasons that a bill cannot become law except upon approval by the Governor or upon his veto being overridden by both Houses. The opinion notes that, as a result, "a vetoed bill is without effect until the veto is overridden." The opinion further notes that an item in the Appropriations Bill which is vetoed and such veto is subsequently overridden upon the General Assembly's return, may be expended in the remaining part of the fiscal year for which it was appropriated. Supra.

We fully realize that once the General Assembly has adjourned sine die, it cannot officially receive the "return" of the vetoed bill for the purpose of considering the vetoes. As the Court noted in State v. Olson, 260 N.W. 586 (N.D. 1935), upon sine die adjournment, the Governor cannot make return to the General Assembly prior to the next meeting because such is "an impossible act." See also, Annos., 82 L.Ed. 454, 64 A.L.R. 1447 (1930). Since the General Assembly has adjourned sine die, any attempted "return" is without effect until the Legislature returns. As the Court stated in Corwin v. Comptroller General, 6 S.C. 390, 398 (1875), "it was only the final adjournment of the Legislature of both houses" which prevents the return of a Bill. [Quoting other authorities, the Court stated that "... when a final adjournment of the Legislature for the session occurs before the expiration of five days, then the Bill cannot be returned, nor could the two houses act upon it if it could be then returned."]

Nevertheless, as Attorney General McLeod has reasoned, and cases in other jurisdictions have held, a veto of a bill, including an item in the Appropriations Bill, after sine die adjournment, is effective, notwithstanding the fact that "return" to the General Assembly cannot be made

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until the General Assembly returns. In State v. Olson, supra, this question was addressed with respect to a vetoed portion of an Appropriations Bill. The Court in Olson noted that a return with objections by the Governor to the Legislature is "the orderly and Constitutional method for making disapproval known to the legislative body so that this body may enact into legislation the items disapproved, if it sees fit." But, noted the Court,

... [i]f the Legislature be not in session, the Governor cannot transmit it to the legislative body. The Constitution does not require an impossible act ... If the Legislature be not in session, there is no way for the [vetoed] ... items to become valid nor to be enacted into legislation. It must not be overlooked that the Governor when approving or disapproving items in an appropriation bill is acting in a legislative capacity and not simply as executive.

The Court clearly held that items vetoed subsequent to sine die adjournment were ineffective, because the vetoes were valid.

The same conclusion was reached in State v. Martin, 385 P.2d 846 (Wash. 1963). There, the Court stated:

Inherent in this argument is the proposition that, because the appropriation was vetoed after the 1963 extraordinary legislative session adjourned sine die and there will be no opportunity for the legislature to override the veto until the 1965 session convenes (unless a special session should be called meanwhile by the Governor) ..., [the Governor's veto was ineffective.]

We are not persuaded by this argument ... [The Constitution] contains no exceptions restricting his power to veto items appropriating funds for any legislative purpose.

Furthermore, the Governor had no control over the time of the adjournment ... Only the Legislature had control of

that matter. If it so desired, it could have remained in session until the time expired for the Governor to veto bills passed by it. In that event, it could have immediately proceeded to reconsider this appropriation in light of the Governor's written objections thereto

Neither did the Governor have any control over the time when House Bill No. 1, or any other bill enacted by the legislature, would be presented to him for his approval or disapproval. Only the legislature had control over that matter.

Both in Martin and in Olson, the pertinent constitutional provision at issue was similar, but not identical to Article IV, Section 21. But in each case, notwithstanding the differences in constitutional language, the thrust of the court's holding was that, with respect to items vetoed in an appropriation bill subsequent to sine die adjournment, such vetoes were constitutionally valid. These cases further support Mr. McLeod's 1982 opinion that the Governor may validly veto legislation after sine die adjournment.

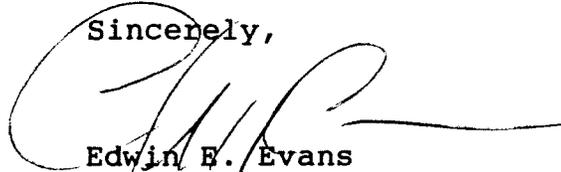
Conclusion

1. The Governor may sign a bill received by him within five days of sine die adjournment, at any time until the expiration of two days after the next meeting of the General Assembly. If the two days following the next meeting expire with the Governor having taken no action on the Bill, such Bill becomes law "as if he had signed it", pursuant to Article IV, Section 21.
2. The opinion of former Attorney General McLeod, dated June 14, 1982 is herein reaffirmed. Accordingly, the Governor may validly veto legislation after sine die adjournment. Such veto remains effective unless not returned within two days of the next meeting, or unless subsequently overridden. With respect to the Appropriations Act, such items as are not vetoed, are approved pursuant to Article IV, Section 21. If the Governor vetoes items in the Appropriations Act following sine die adjournment, such vetoes are valid, and

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remain valid, so long as returned to the General Assembly within two days of the next meeting and are not overridden in the manner prescribed in Article IV, Section 21.

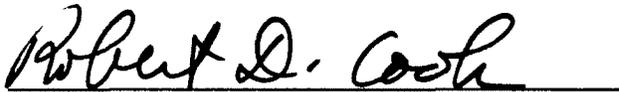
Sincerely,



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