The State of South Carolina

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April 25, 1994

The Honorable Carroll A. Campbell, Jr.
Governor of the State of South Carolina
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Dear Governor Campbell:

You have asked for an interpretation of Art. IV, Section 21 of the South Carolina Constitution as it relates to the Governor's veto of a bill. Specifically, you wish to know whether the veto of Senate Bill S.520 bearing ratification number R-347, "A Bill to amend Section 7-13-860, Code of Laws of South Carolina, 1976, relating to the appointment, qualifications, identification and conduct of poll watchers, so as to specify the maximum size of lettering on identification badges and to prohibit badges in fluorescent colors," is valid. It is our conclusion that the veto of the bill is valid.

The facts are not in dispute. The Bill was delivered to the Governor for consideration on April 14, 1994. On April 20, 1994, the Governor vetoed the Bill, and attempted to have it returned to the Senate sometime after 5:30 p.m., probably around 6:30 p.m. The Bill was presented to the Senate Clerk for receipt, not in the Senate Chamber, because the Senate had adjourned for the day, but somewhere on the Capitol Complex grounds. The Clerk noted that it was past 5:30 p.m. and thus did not "sign for" the Bill, (by receipt), apparently because the Senate had adjourned and it was past the close of the ordinary business day. In any event, the Bill was not accepted and the member of the Governor's staff returned with it. The next morning, the Bill was again presented, and this time receipted by the Senate Clerk at 9:15 on April 21, 1994. The Bill was then forwarded to the Secretary of State for attachment of the Seal of the State. In the letter forwarding the Bill, the Clerk noted that the Governor "had until Wednesday, April 20, 1994 to return the Bill to the Senate", but that it was returned on Thursday, the 21st. The question presented is whether the veto of the Bill was valid, in light of the fact that the Bill was not actually physically transferred to the Clerk until April 21, 1994.

Art. IV, Section 21 of the South Carolina Constitution provides in pertinent part:

> 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.

The foregoing Constitutional provision is mandatory, and must be complied with in full. Op. Atty. Gen., July 23, 1981. The following rule is almost universally followed with respect to computation of the time requirements of this Constitutional mandate:

> In computing the period of time within which a chief executive may approve an act of the legislature presented to him, or within which the act, if not returned, will become a law, the terms used in the constitutional provision are to be given the meaning they have in common use, unless there are reasons to the contrary. In computing the time allowed for the approval or disapproval of a bill by the chief executive, the period is regarded as beginning when the bill is presented to the chief executive. It is a general rule that the day of presentation is to be excluded and the last day of the specified period included. For this purpose, "days" consist of 24 hours each and begin at twelve o'clock midnight and extend through 24 hours to the next twelve o'clock midnight.

73 Am.Jur.2d, Statutes, § 79.

Our Supreme Court has agreed with this basic rule. In Corwin v. Comptroller General, 6 S.C. 390 (1875), the Court, quoting Opinion of the Justices, 45 N.H. 607 (1864) stated:

> The provision of the Constitution in relation to this subject should receive a reasonable construction, and it can hardly be supposed that the time limited for the return of the Bill has expired because that branch of the Legislature in which the Bill originated had adjourned for the day, if the five days limited by the Constitution have not expired. The word

> 'day,' in its common acceptation, means a civil day of twenty-four hours, beginning and ending at midnight.

This Office has reached the same view, that the word "day" as used in the Constitution, means until midnight not the end of the legislative day. See, Op. Atty. Gen., June 28, 1982. Indeed, the authorities note that the Governor cannot rely on the fact that the Legislature was not actually meeting to extend the time for his return of a bill. "In some instances bills have become law under this provision because the executive has not returned it to the legislative officers during recess but has waited until there is an actual meeting." Sutherland, Statutory Construction, § 16.03 (Sands 4th ed.). Thus, it is clear that the five-day period for consideration began on the 15th of April, the 17th (a Sunday) was excluded, and the Governor had until midnight on the 20th to return the Bill with his objections. Such time could not be restricted either because the Senate had recessed for the day, or because of the close of the business day at 5:00 or 5:30. 82 C.J.S., Statutes, § 49.

The question then becomes what is meant in the Constitution by the term "returned" by the Governor. It is critical also to know the meaning of the term "presented" to the Governor, so it can be determined whether the time frame as set forth above was met.

It has been held that in order for a Bill to be properly "returned" by the Governor, the Bill must be put beyond the Executive's possession, that it must be placed in the possession, actual or potential of the house in which it originated. The word "return" is equivalent to the word "presented". Harpending v. Haight, 39 Cal. 189, 199, 2 Am.Rep.

The decision of State ex rel. State Pharmaceutical Assn. et al. v. Michel, Secretary of State, 52 La. Ann. 936, 27 So. 565 (1900) definitively interprets the meaning of the term "presented" which is, as noted, equivalent to the term "returned". In that case, a Bill was delivered personally to the Governor at about 11 p.m. The Governor's Secretary had gone home, but the Governor was present, yet declined to accept the Bill. The Court concluded, nevertheless, that despite the Governor's refusal to accept, it had been properly "presented" to him. The Court noted:

> The mandate of the organic law is not that the governor must act, in the way of a veto, within five days of his reception of a bill, but within five days of its presentation to him. If it were the first, he might, by not receiving a measure, hold it up ... thus defeating its becoming a law; or, action on the veto by the two houses would be prevented. But the presentation of the measure being made to him, - an offer of it to him; a tender of it to him, it can make no difference that

> he does not receive it. The constitutional requirement is fulfilled, and from that moment the delay begins to run and he must act, if his purpose be to veto within five days. 27 So. at 567. (emphasis added).

Likewise, it has been noted that

> [t]he place where the Governor receives communications from the two houses must depend on usage, and when a place has been established by long continued practice and common understanding, the fact that the governor is temporarily absent for an hour or for an afternoon ought not to affect the presentation, where the bill is deposited in the usual place by an officer of one of the houses.

82 C.J.S., Statutes, § 48, p. 78. And as was stated in State ex rel. Corbett v. South Norwalk, 77 Conn. 257, 58 A. 759 (1904),

> It [the period of limitation] begins when the bill is presented to him. It cannot be deemed to have been presented to him until it has been in some way put into his custody, or into that of someone properly representing him, in such a manner that he has a reasonable opportunity to inspect and consider it. ... In like manner, a bill which he does not approve cannot be deemed to have been returned by the governor until he or someone properly acting in his behalf, has put it out of his custody into that of the house in which it originated, or of someone properly acting in its behalf, in such a manner that there is a reasonable opportunity given for that house to become apprised of his objections and proceed to a reconsideration. (emphasis added).

As stated in State v. Holm, 215 N.W. 200, 203 (Minn. 1927), "[i]t is the official duty of the one to whom the bill is returned to promptly report to the house when in session. ... The place for the return is not important."

CONCLUSION

It is our view, based on the foregoing authorities, that the Governor's veto of the Bill, in this instance, was valid. The Governor had until midnight of the 20th in which to act, and he did so. That time could not be shortened.

The fact that the Bill was not, in this instance, physically accepted by the Clerk until the 21st cannot be of any legal significance. The Governor presented the Bill for return and this is all that could be expected. Otherwise, the Governor could never effectively veto a Bill and the Constitution would be thwarted.

For purposes of the Constitution, it is the tender or offer of the Bill to the Clerk, or someone properly acting for the legislative body, which is important to determine whether the Bill was properly "returned" by the Governor within the five-day period. Likewise, it is the tender or offer of the Bill to the Governor, or someone properly acting on his behalf, which constitutes a validly "presented" Bill to start the Governor's five-day clock running. The day actually "presented", is, of course, excluded.

The Governor must be given notice of and the opportunity to review the Bill enacted, Op. Atty. Gen., February 15, 1979, and the legislative body from which the Bill originated must be given the opportunity to review the Governor's objections to a bill if he has any. The constitutional time clock can neither be shortened nor extended.

Here, the Bill was "presented" to the Governor on April 14. It was "returned" on the 20th when presented to the Clerk for acceptance. At that point, the Senate was given a "reasonable opportunity" to consider the Governor's objections. The Bill was thus vetoed in accordance with the Constitution and it remains now for the General Assembly to decide what action it wishes to take -- whether to accept the veto or override it.

A final word of caution is in order. While we conclude that the lack of physical transfer of the Bill back to the Senate is not controlling herein, such transfer must be the norm both in presentment to the Governor and in return to the Legislature. The legislative and executive branches must work smoothly for constitutional government to work properly.

With kindest regards, I am

Sincerely yours,

T. Travis Medlock
Attorney General

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