THE GOVERNOR'S APPROVAL OF LEGISLATION IN CONNECTICUT

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The Supreme Court of Errors of Connecticut in the case of State v. McCook, decided July 25, 1929, determined an important question as to the time within which the governor may approve legislation in that state. Article IV, § 12, of the constitution of Connecticut, framed in 1818, is, with verbal changes, and with differences of the period for executive consideration and in legislative majorities, substantially the same as the provision of the constitution of the United States with respect to executive approval or disapproval of legislation. The Connecticut provision reads as follows:

"Every bill which shall have passed both houses of the General Assembly, shall be presented to the Governor. If he approves, he shall sign and transmit it to the Secretary, but if not, he shall return it to the house in which it originated, with his objections, which shall be entered on the journals of the house; who shall proceed to reconsider the bill. If after such reconsideration, that house shall again pass it, it shall be sent, with the objections, to the other house, which shall also reconsider it. If approved, it shall become a law. But in such cases the votes of both houses shall be determined by yeas and nays; and the names of the members voting for and against the bill, shall be entered on the journals of each house respectively. If the bill shall not be returned by the Governor within three 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, prevents its return, in which case it shall not be a law."

The last sentence of this provision is the most important and the least clear. The power of the governor to approve bills after legislative adjournment has become increasingly important in Connecticut and in all other states, because of the legislative practice of passing the bulk of legislation in the last few days of the session. The McCook case involved the governor's approval of a measure passed in 1925, and of the 779 bills passed by the Connecticut General Assembly in that year, 322 came to the governor after final adjournment of the legislature. The number and proportion of the bills so coming to the governor after adjournment was substantially larger in 1927 and 1929.

The Connecticut General Assembly adjourned on June 3, 1925. The measure here involved was presented to the governor on June 22, 1925, and was signed by him on the day of presentation. Although basing its decision that the act was invalid partly upon other grounds, the court held that "bills presented to the governor may not be signed by

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him more than three days (Sundays excepted) after the final adjournment of the General Assembly."

The Connecticut constitutional provision is capable of at least four constructions:

1. It may be argued with some plausibility that the words, "unless the General Assembly, by their adjournment, prevents its return" relates of necessity only to disapproved bills, and that approved bills are not to be returned. This view is supported by language of Judge Denio in People v. Bowen,1 with reference to a similar New York provision:

"It is plain that this relates exclusively to bills which the Governor has neglected to approve and sign. It is such bills, and not those which he has approved and signed, which are not to become laws on account of a premature adjournment of the legislature. The provision does not qualify the mandate contained in the earlier part of the section, by which it is enjoined upon the Governor, that, if he approves of a bill, he shall sign it. I am, therefore, of opinion that there is nothing in the language of the Constitution forbidding the approving and signing of a bill by the Governor after the session of the legislature shall have terminated by an adjournment. If he cannot legally do so, it is on account of some implication arising out of the nature of the subject or of the act to be performed, or the general arrangements of the Constitution...."

"It is argued that, upon the construction which I have suggested, no time whatever is fixed within which bills are, in such cases, to be signed, and that, if it can be done after the adjournment, it may be done at any indefinite period thereafter; and that the inconvenience would arise, that it might remain a long time uncertain whether a measure which has received the assent of both branches of the legislature should eventually be a law or not. This consequence will certainly follow, unless there is an implication arising out of the fixing of a period of ten days for the consideration of bills presented to the Governor while the legislature remains in actual session. It is plain that the authors of the Constitution considered that period sufficiently long for the performance of that duty; and I think he would not be justified in acting upon a bill after his ten days had elapsed, whether the session continued or not. But, if this were otherwise, it would not afford a reason for adding to the Constitution, by a judicial determination, a qualification of the power of the Governor to approve bills which is not contained in the instrument. The Constitution does not often prescribe detailed provisions for the regulation of the departments of the Government. A general power is usually conferred, and it is then left to the legislature to provide by law as to the time and manner of its performance. But if we concede that the limitation of ten days does not apply, and that a limitation cannot be fixed by law, I am of opinion that the concession would not authorize a determination against the existence of the right to approve bills after the adjournment. It would plainly be the duty of the Governor to act upon such bills as had been left in his hands on the adjournment, at the earliest practicable time thereafter. The nature of the duty, and the inconveniences of delay, would sufficiently inculcate the obligation of diligence in that respect." ...

1People v. Bowen, 21 N. Y. 517, at p. 519, 520 (1860).
But, as Judge Denio's language indicates, it was unnecessary in this case to go beyond holding that the governor's power extended to a fixed number of days beyond adjournment. Under the view suggested by Judge Denio there is no time limit upon the governor's power to approve, and in Connecticut he would have been able to act favorably upon bills passed by the legislature in 1925, during the period from June, 1925 to January, 1927. This alone properly leads to a rejection of this construction, especially when coupled with a constitutional or statutory provision as to the date upon which new legislation shall become effective. Such a proposed construction would also neglect the effect of the first clause of the sentence which, by limiting the governor's period for either favorable or unfavorable consideration during the session, evidences an intention opposed to an unlimited period for consideration after adjournment. The Connecticut court quite properly rejected such a construction.

2. It may be argued with equal plausibility that any return of the bill ceases to be possible immediately upon the adjournment of the General Assembly, and that upon such adjournment, therefore, return being prevented, the "bill shall not be a law." This would require that, if it is to become law, through approval by the governor, every bill be presented to the governor and acted upon by him before legislative adjournment. With a few exceptions, this has been the practical construction of the constitution of the United States. A different view was taken by President Wilson in 1920, with the approval of the Attorney General of the United States, and was the occasion for a valuable discussion of the problem by Professor Lindsay Rogers. The view that no power exists to approve after legislative adjournment proceeds largely on the theory that the governor is acting as a branch of the legislature and not as an executive, and has the support of decisions in California, Nevada, and Mississippi of an opinion of the justices in Massachusetts, and of opinions of the Attorney General of the United States before 1920. But the view of the Attorney General has been altered; constitutional changes in California, Massachusetts and Nevada have rendered the decisions in those states inapplicable; and the Mississippi court reversed its decision in 1887. It is true that the Missis-

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2Rogers, The Power of the President to Sign Bills after Congress has Adjourned, (1920) 30 Yale L. J.
4Trustees of School District No. 1 v. County Commissioners of Ormsby County, 1 Nev. 334 (1865).
5Hardee v. Gibbs, 50 Miss. 802 (1874).
6Opinion of the Justices, 3 Mass. 567 (1791).
732 Opinions of the Attorney General, 225 (1920).
8State ex rel Attorney General v. Board of Supervisors of Coahoma Co., 64 Miss. 358, 1 So. 501 (1887).
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Mississippi constitution of 1890 expressly provides that "no bill shall be approved when the legislature is not in session," but this express provision lends no aid to the suggested construction of the Connecticut provision. Such a construction has little support in present authorities, and is based upon an erroneous theory of the governor's power over legislation. The governor is not acting as an organ of the legislative department but as an executive exercising a qualified veto power conferred upon him by the constitution.9

3. A third possible construction is that the constitution expressly gives to the governor a period of three days after the presentation of each bill in which to approve it or to return it with his objections. No exceptions are made and none exist. There is a continuing power to approve during this time, irrespective of adjournment, and the three days given to the governor with respect to the bill, by the explicit terms of the constitution, run from the time that "it shall have been presented to him." The allotted period is for executive consideration of the bill, and he cannot begin to consider it until it has been presented to him. In a prior decision10 the Connecticut court had said:

"The commencement of this period of not exceeding three days, given by the Constitution to the Governor for the consideration of every bill which has been duly passed by both houses, is certain. It 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 some one properly representing him, in such a manner that he has a reasonable opportunity to inspect and consider it."

The view that the executive may approve after adjournment within the constitutionally prescribed period is not only the more practical, but is more directly in line both with the language and with the purpose of the constitution. It is the more commonly adopted construction of constitutional provisions similar to that of Connecticut. If a power exists to approve after adjournment, and is limited to the days prescribed in the constitution, it would appear necessarily to follow that the period begins to run upon presentation of the bill to the governor. This is expressed or clearly implied in decisions construing the constitutions of Illinois,11 Maryland,12 and Vermont,13 and in the opinion of

9See Board of Education v. Morgan, 316 Ill. 143, 147 N. E. 34 (1925), and Hartness v. Black, 95 Vt. 190, 201, 114 Atl. 44 (1921).
10State v. South Norwalk, 77 Conn. 257, 260, 58 Atl. 759 (1904). For a discussion of the technical question as to when a bill is presented, see Oliver P. Field, Presentation of Bills to the Governor, (1922) 56 Am. L. Rev. 898.
12Lankford v. County Commissioners of Somerset County, 73 Md. 105, 22 A. 412 (1890).
13Hartness v. Black, 95 Vt. 190, 114 A. 141 (1921).
the Attorney General of the United States. In the New York case of *People v. Bowen*, the court discusses broadly the power of the governor to approve after adjournment, and Judge Denio said that "I think he would not be justified in acting upon a bill after his ten days had elapsed, whether the session continued or not," without indicating at what point the ten days would begin, though the whole opinion is based on the theory that the ten days would be the same both before and after adjournment—that is, ten days after presentation to the governor.

4. A fourth construction, and that adopted by the court in this case, is that a power to approve continues after legislative adjournment, but can be exercised only within the three days (Sundays excepted) after the adjournment, irrespective of when bills may have been presented to the governor. This fourth view rests upon the same arguments as the third, so far as it supports a power to approve within a limited period after adjournment. But in having the three-day period run from adjournment rather than from presentation to the governor, this view runs counter to the constitutional language, and finds no support in the statement of the Supreme Court of Georgia that the governor had signed bills within five days after adjournment.

The recent Connecticut decision involved no issue as to computation of time, except as to when the three-day period begins. The court's opinion does not indicate a consideration of alternative (three), as set out above, but explicitly limits the choice to an unlimited period upon the part of the governor as contrasted with a period limited to three days from adjournment. The authorities cited by the court support the third rather than the fourth alternative, as does the explicit language of the Constitution of Connecticut. Not only this, but substantially the whole argument against an unlimited period for approval supports the third as well as the fourth alternative. The arguments as to practical and contemporaneous construction as presented by the court in no way support the view of the court as distinguished from that based on time of presentation.

But the court apparently proceeds upon the theory that, in view of a Connecticut statute not referred to in its opinion, there is no dif-

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132 Opinions of the Attorney General, 225 (1920).
121 N. Y. 517 (1860).
17For the exclusion of Sundays and holidays, see State v. Holm, 172 Minn. 162, 215 N. W. 200 (1927), and note (1928) 52 A. L. R. 339.
18There may occasionally be an extreme case under the third alternative in which by mistake a measure actually passed fails to be presented promptly to the governor. The only case of this character known to the author of this comment is that of an act passed by the Illinois legislature in 1925, but overlooked by the clerical officers of the legislature and not presented to the governor until May 19, 1926. See Cahill's Illinois Revised Statutes, 1927, p. 2296.
ference between the third and fourth alternatives, for its language in at least one place appears explicitly to adopt the third alternative. Section 42 of the General Statutes of Connecticut provides:

"All bills for acts and resolutions which shall be passed by the two houses of the general assembly, but which shall not have been engrossed prior to the final adjournment thereof, shall be transmitted to the governor for his approval; and, if approved by him, he shall sign the same, indorsing his approval thereon, and transmit the same to the secretary; and the secretary shall thereafter engross the said bills, under the direction of the engrossing committee, and, when so engrossed, they shall receive the signatures of the presiding officers of the two houses, the clerks and the governor, in the manner provided by law; and such bills so passed, signed and approved, shall from and after their said approval have the same force and validity as all other laws of the state."

This was argued by McCook's counsel to require that all bills be presented to the governor "at the moment of adjournment." Were this done, the three days after adjournment would be identical with three days after presentation. But, with 322 bills passed at the close of the session in 1925, preparation even in unengrossed form for presentation to the governor would take some time, and an identity of time of presentation with time of adjournment could never in fact exist. The court's view that it must choose between a fixed period after adjournment and an unlimited period for approval derives some support from the fact that nineteen days intervened between legislative adjournment and the presentation and approval of the measure involved in the present case. And obviously a two-months' interval such as occurred with respect to one act in 1927 is so excessive as to constitute an abuse.

As a matter of fact, were the statute in the McCook case not being held invalid on other grounds, it would have been saved by having the three days begin with presentation to the governor rather than with the legislative adjournment. In his message to the special session of the Connecticut General Assembly, convened on August 6, 1929, Governor John H. Trumbull asserted that the measure involved in this case was signed by him on the day of its presentation, although the record shows this to have been nineteen days after legislative adjournment.

The decision in the McCook case presents two practical questions: (1) The court having explicitly declared that all acts not signed within three days after the final adjournment of the legislature are void, some fifteen hundred legislative acts (almost all adopted in the period 1919–1929) immediately became subject to attack; (2) Under present legislative methods, it is physically impossible to present all measures to the governor within three days after legislative adjournment, and obviously impossible, therefore, for the governor to consider such measures.
The first question demanded an immediate answer, for to invalidate some 1500 laws enacted over a period of ten years, would play havoc with the statutes of the state. The governor at once called a special session of the legislature, and measures were passed reenacting the laws affected by the McCook decision, making such reenactment retroactive to the dates of original passage of such laws, and validating all acts and proceedings thereunder. The validity of this legislation has at once been attacked, and the questions raised by it are not discussed in this comment.

The second practical problem as to the time available for executive consideration of measures was fully discussed by the court:

"The burden imposed upon the governor of having a very considerable percentage of all bills passed at the session of the general assembly returned to him after its final adjournment—many of these the most important of the session—literally prevents his fair consideration of the merits of this mass of legislation within the constitutional three-day period. If he signs all of these bills the people may be deprived of the governor's considered view of these measures and the constitutional check upon hasty, ill-considered and publicly inimical legislation removed by the pressure of the burden placed upon the governor. On the other hand, bills which the governor does not sign, however meritorious they may be, will fail to become law. The avoidance of this untoward public situation is neither hard to see nor difficult to enforce. A better distribution and a prompter disposition of the business of the general assembly and the avoidance of leaving the most important bills to the closing days of the session will not only relieve the governor from the burden of a duty which is impossible of proper performance, except under most exceptional circumstances, but will also tend to give the general assembly the opportunity for more extended consideration of important measures. A recess taken by the general assembly, after it is through with its business, of ten days, would give the governor the opportunity of fairly considering bills returned to him, and give the general assembly the opportunity of reconsidering bills returned to it disapproved of by him. This course would not conflict with the power of the governor in signing bills within the period prescribed by the constitution after the final adjournment of the general assembly."

The court's suggestions are intelligent and in part practical. The practice of enacting a great mass of legislation in the confusion of the closing days of a legislative session is foolish and indefensible, but the court's remarks are not likely to alter such a bad practice. The suggestion of a ten-day recess is practicable. The liberal constitutional limit of five months upon the length of the legislative session in Connecticut would make it readily possible to treat the session as terminating (for the original consideration of bills) fifteen days before the constitutional expiration of the session. A recess of ten days or more would then permit the preparation of bills and their submission to the
governor before the termination of the recess. Although some bills probably would not be ready for presentation to him for perhaps ten days after their passage, he would have three days after presentation of each bill. The reconvening after the recess would probably be a mere formality, but the formality would save the day constitutionally. All the real work of the legislature having been done before its recess, the experience of Illinois with a similar plan is that a quorum does not attend when the legislature reconvenes, but on reconvening, a motion for final adjournment is about the only business, and a quorum is not necessary for the adoption of such a motion.

Aside from the immediate problem as to some 1500 laws affected by the McCook case, it is from a practical standpoint immaterial whether the three-day period begins with adjournment or with presentation of a bill to the governor. Certainty of rule is here more important than technical accuracy of constitutional construction. Three days is normally a long enough period for consideration of one bill, but is obviously insufficient for three or four hundred bills. A distribution of the governor's work of passing upon bills may be accomplished either (1) by allowing him three days after presentation of each bill upon adjournment, the preparation for presentation of necessity taking some time, the bills coming to him day by day as they are ready, and the governor having a number of days to dispose of the whole mass of legislation; or (2) by accomplishing the same purpose by a recess after the completion of the work of legislation, with a subsequent formal session for adjournment. Either plan would seem to be supported by the Connecticut constitutional text, but the limitation to the second by the rejection of the first is harmless under the present legislative practice of passing the great bulk of legislation at the end of the session. And the second plan has the advantage of imposing a specific time limit not present in the first. It is, however, obvious that, under any adjustment, the constitutional limit of three days is too short. This situation can only be met by constitutional amendment. Such an amendment may wisely abolish the pocket veto, and provide, as does Colorado, that where the adjournment of the General Assembly prevents the return of a bill “it shall be filed with his objections, in the office of the secretary of state within thirty days after such adjournment, or else become a law.”

12Colorado Constitution of 1876, Art. IV, § 11.