

# OFFICE OF THE ATTORNEY GENERAL

82-00108



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NOV 30 1981

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Honorable Bob McKee  
Representative, District 79  
Montgomery County  
P. O. Box 424  
Montgomery, Alabama 36104

Constitution - Legislation -  
Governor

Constitution, Section 125  
discussed in relation to  
H.B. 34.

Dear Representative McKee:

You have asked confirmation by this office of your interpretation of the Constitution of Alabama 1901, Section 125, as applied to a particular fact situation. The facts stated are as follows:

On November 17, 1981, in the current special session of the Alabama Legislature, House Bill 34, commonly known as the Pay and Classification bill, was passed by both houses of the Legislature and reached the Governor's desk at 2:15 p.m. on the 18th day of November.

More than six days have passed since this bill reached the Governor and he has not returned it to the Legislature. There have been Legislative days in which the Legislature did meet since he received the bill, but there has been no Legislative day since the sixth day has passed.

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The Legislature has stated publicly, through its leadership, that it will meet only one more day, Monday, November 30, 1981.

Assuming he does not sign the bill, it is my opinion that the Governor must return this bill to the Legislature on November 30, the last Legislative day, or else the bill will become law without his signature.

It is the opinion of this office that your interpretation is correct. Section 125 contemplates a right of the Governor to object to legislation either by affirmative or negative action depending upon when the bill is presented to him for consideration: if the bill is presented to him more than five days prior to adjournment, he may only veto by affirmative action; if the bill is presented less than five days before adjournment, he may veto by inaction, i.e., "pocket veto." In the fact situation presented, the bill was presented twelve days before the contemplated adjournment, and the Governor must affirmatively express his objection prior to adjournment, or the bill will become law. The Governor cannot cause the death of a bill because of his failure to return the bill.

We must note, however, that Building Commission v. Jordan, 254 Ala. 433, 48 So. 2d 565 (1950) does not completely dispose of the question. In that case, the Supreme Court noted that where the Governor's return of a bill is prevented by recess, he has two legislative days within which to make the return. The Court went on to say that where only one legislative day remains after recess, and that day is the last day on which the legislature can meet under the Constitution, the Governor must make the return on that day. In the present case, the first legislative day after the recess is the tenth legislative day of the special session which can constitutionally continue for twelve legislative days or thirty calendar days. The thirtieth calendar day will be December 2, 1981. It is arguable that the legislature will prevent the Governor's return on the second legislative day after recess by adjourning sine die on the first legislative day after

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recess. If the two-day enlargement after recess could be construed as an extension of the six days granted the Governor to consider objections, prevention of return by adjournment would cause the bill to fail.

This possible alternative to our opinion agreeing with your interpretation could necessitate judicial construction.

Respectfully submitted,

CHARLES A. GRADDICK  
Attorney General  
By -



R. FRANK USSERY  
Assistant Attorney General

RFU/fd