

Opinion No. 59-28

March 12, 1959

BY: FRANK B. ZINN, Attorney General

TO: Honorable John Burroughs Governor, State of New Mexico State Capitol Building
Santa Fe, New Mexico

Partial veto should be followed by return of bill to originating house with Governor's objections or, if Legislature has adjourned, by immediate deposit thereof with the Secretary of State.

Three day period for consideration of bills presented to him during the legislative session is to be three calendar days following the day bill is presented.

Bills presented to the Governor on March 11th, 12th and 13th must be approved by him within twenty days following adjournment to become law. In measuring this period, March 13th, adjournment day, is excluded, so that April 2, 1959 is the 20th or last day.

For purposes of determining the period within which the Governor must act, the "last three days of the session" are March 11th, 12th and 13th.

OPINION

{*39} In your letter received yesterday, you request prompt guidance in {*40} connection with several questions arising under Article IV, Section 22 of the State Constitution, with respect to the authority and duty of the Governor in acting upon bills enacted by the Legislature.

First, you inquire as to the procedure necessary to complete effectively the legislative process as to any bill containing an appropriation which has been partially vetoed by the Governor.

Second, you ask how time is measured with respect to the period in which the Governor may approve or disapprove bills.

Finally, you ask how the term, "the last three days of the session", as used in Article IV, Section 22, should be interpreted.

A bill, whether wholly vetoed or partially vetoed, during the legislative session which reached the Governor during any period prior to the last three calendar days of the legislative session should be physically returned to the house originating the bill accompanied by the Governor's veto message setting forth his objections to the bill or the portion vetoed. The fact of the veto and the details relating to it should be entered in the journal of the appropriate house. The house of the legislature should consider the

fact of the veto as other legislative matters and upon appropriate motion act to override the veto. The result of the action on the motion should then be duly entered in the Journal. If the required majority vetos to override, the measure should be transmitted to the other house for their action, if the motion fails then the measure should be returned to the Governor. The Governor should transmit to the secretary of state all bills when final action by him has been completed upon them.

Bills received by the Governor during the last three calendar days of the legislative session may be acted upon by him during the twenty day period following the day of adjournment. As to the measurement of the twenty days, the day following adjournment is the first day counted and the period extends until midnight of the twentieth day and in this case, the fact that either the first or last day falls on Sunday would not affect an extension of the period. As to the 24th legislative session, the date of adjournment determined within the limit imposed of sixty days would be Friday, March 13th, with the time as required by the constitution to be 12:00 noon of that day. This makes the last three days of the session the 11th, 12th and 13th of March. Any measures received by the Governor during the hours from 12:01 a.m. on the 11th of March or thereafter fall within the bills to which the twenty day consideration period applies. The practice of the legislature by which they may extend legislative days over two calendar days would not affect the determination of when the last three days actually begin. Days, unless otherwise provided, must be interpreted as the regular twenty-four periods extending from midnight to midnight.

Accordingly, the bills received by the Governor at any time during the session prior to 12:01 a.m., March 11, the beginning point for the 24th session of the "last three days" are those measures which become law unless vetoed within three days after receipt.

The applicable provisions of law are all found in the Constitution and are set forth in this opinion.

Article IV, Section 5:

"Each regular session of the legislature shall begin at 12:00 noon on the second Tuesday of January next after each general election and shall remain in session not to exceed sixty days. No special session of the legislature shall exceed thirty days."

Article IV, Section 14:

{*41} "Neither house shall, without the consent of the other, adjourn for more than three days, Sundays excepted; not to any other place than that where the two houses are sitting; and on the day of the final adjournment they shall adjourn at twelve o'clock, noon."

Article IV, Section 22:

"Every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval. If he approves, he shall sign it, and deposit it with the secretary of state; otherwise, he shall return it to the house in which it originated, with his objections, which shall be entered at large upon the journal; and such bill shall not become a law unless thereafter by two-thirds of the members present and voting in each house by yea and nay vote entered upon its journal. Any bill not returned by the governor within three days, Sundays excepted, after being presented to him shall become a law, whether signed by him or not, unless the legislature by adjournment prevent such return. Every bill presented to the governor during the last three days of the session shall be approved by him within twenty days after the adjournment and shall be by him immediately deposited with the secretary of state. Unless so approved and signed by him such bill shall not become a law. The governor may in like manner approve or disapprove any part or parts, item or items, of any bill appropriating money, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided."

The case of **State ex rel. Dickson v. Saiz**, 62 N.M. 227, 308 P. 2d 205 (1957), contained some observations by the Court which indicated that it was not necessary in the case of a partial veto for the Governor to return for the consideration of the legislature the entire measure, but only the portion vetoed, with the remainder of the measure to be sent on to the secretary of state as an effective enactment requiring only the ministerial treatment to be administered. The Court indicated this to be merely a permissive procedure. It is recommended that a more practical method of handling the matter would be as I have outlined, a return of the entire bill, so that it could be treated in accordance with the rules of the legislative houses and in the manner of other measures.

In any event, items in a bill containing an appropriation which are vetoed by the Governor after adjournment cannot become law. **State v. Zimmerman**, 289 N.W. 662 (Wisc., 1940); **State v. Olson**, 260 N.W. 586 (N.D. 1935).

In your second inquiry, you ask in effect how time is to be measured to determine the period within which the Governor may approve bills presented to him during the last three days of the session. I find no decision by our Court exactly to point. Opinions of previous Attorneys General are in conflict. Compare Opinions 1915-16, p. 56, and 1923-24, p. 24, with 1925-26, p. 12. The first two of these are based on the premise that the day upon which the Legislature convenes at noon is counted as the first day of the session, and ends at midnight; that the second day begins at midnight and continues until the following midnight, and so on; and that the Legislature must adjourn at noon on the sixtieth day, so determined, under Article IV, Section 14. On the other hand, the last opinion cited applies the general rule of Section 1-2-2- (7th) N.M.S.A., 1953, excludes the first day of the session and counts the last day.

Without deciding whether or not a rule of statutory construction (as Sec. 1-2-2 (7th) is) should {*42} be applied to construction of constitutional provisions, I conclude that if applicable, it was erroneously applied in the 1925 opinion (No. 3806, issued 3/11/25.).

The rule is intended to apply to the measurement of time after some particular occurrence. To apply it to exclude the first day of the session would require that we determine that the month of January has only 30 days, since the first day is to be excluded. This example illustrates the absurdity of such application.

It follows from the above that the first day of the current legislative session began at noon on Tuesday, January 13, 1959, and ended at midnight the same day; that the 60th day of the session, accordingly, is Friday, March 13, 1959; and that the Legislature, under Article IV, Section 14, is to adjourn at noon on that day. The legislative practice of extending legislative days without regard to calendar or clock cannot be utilized to change the powers and duties of the governor with regard to the exercise of the veto power granted by the Constitution. This finds support in the fact that although the Courts generally will not look beyond the legislative journals to determine the facts regarding the enactment of a measure, nor beyond the enrolled and engrossed copies of a bill once deposited with the Secretary of State to determine the meaning, or the regularity of enactment. **Lyons v. Wood**, 14 S. Ct. 959, 152 U.S. 649, 38 L. Ed 854; however, if warranted, **Gray v. Taylor**, 33 S. Ct. 199, 227 U.S. 51, 57 L. Ed. 413; the Court will examine the facts relating to the time of receipt of a bill by the Governor and his action upon it when the question was raised, though a presumption regularity of enactment prevailed in the absence of a factual showing to the contrary.

With the time of adjournment determined, determination of the period within which the Governor may approve bills is clear. The Governor may properly approve and sign bills presented to him during the last three days of the session until midnight of April 2, 1959.

The question remains, finally, as to the meaning of the phrase, "the last three days of the session", used in Article IV, Section 22. Based on my view as to the computation of time during a session, above expressed, I conclude that the phrase refers not to legislative days, and that the period beginning at one second past midnight on Wednesday, March 11, and ending at twelve o'clock noon on Friday, March 13th, 1959. No bill presented to the Governor for signature after the midnight which completes the day of March 10th can become law by virtue of the Governor's failure to act thereon; and all such bills are subject to approval within the twenty day period, or are void, as provided in Article IV, Section 22.