

## Opinion No. 25-3806

March 11, 1925

**BY:** JOHN W. ARMSTRONG, Attorney General

**TO:** Requested by: Hon. A. T. Hannett, Governor, Santa Fe, New Mexico.

The Legislative Session Convening January 13, 1925, at Noon, Expires March 14, 1925, at Noon

### OPINION

Your inquiry is substantially as follows:

"The Seventh State Legislature convening at noon, January 13, 1925, -- what is the latest date at which the session may adjourn, to be within the 60-day limitation?"

We may say at the outset, that we have no doubt but what the legislature may adjourn at noon, March 14, next, and be within the law, providing the question is to be determined without the aid of custom or precedent. However, March 5, 1923, General Helmick furnished Senator Hull an opinion on this same question and decided same, in the light of custom contrary to this view. According to General Helmick's opinion, on that occasion, the present legislative session would expire March 13, 1925, at noon. This opinion will be found at Page 24, Opinion No. 3679. Attorney General's Report of December 31, 1924. This opinion adopts the ruling of General Clancy and it may be found at Page 56, Report of Attorney General, 1915-1916. The opinion of General Clancy appears to be based largely upon custom.

We fully concur in the statement and conclusion embraced in the first paragraph of General Helmick's opinion. As to the second paragraph of said opinion, however, we think the same open to criticism because we think the law, as outlined by General Helmick is sufficient to determine the question without resorting to custom or precedent.

Section 5 of the Article 4 of the State Constitution provides that " \* \* \* session of the legislature shall begin at twelve o'clock, noon, on the second Tuesday of January next after each general election. No regular session shall exceed sixty days \* \* \*."

Section 14, same Article, provides that the legislature shall adjourn at twelve o'clock, noon.

Section 5424 Code 1915, provides that:

"In the Construction of statutes, the following rules shall be observed unless such construction would be inconsistent with \* \* \* the context of the statute:

Seventh. In computing time the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday."

Under this rule of construction, the first day, January 13, would not be counted. Then, counting sixty days from January 13, the legislative session would expire March 14, 1925. In making this count, we have excluded the first day, January 13, and have included the last day, March 14.

Both General Helmick and General Clancy may have concluded that our Code on "Statutory" construction did not apply to construction of the Constitution. After a careful examination of the authorities, however, I have concluded that this rule applies to construction of the Constitution as well as to statutes enacted by the legislature.

"The term 'statute' generally is used to designate the written law in contra distinction to the common or unwritten law." -- Bouvier Law Dictionary.

This rule as to the computation of time has been applied in construing similar provisions of the Illinois Constitution in the case of the People v. Hatch 33 Ill. 138. See also Carter v. Henry 87 Miss 411. We have found several other cases where the same rule was applied in construing Constitutional provisions and have found none holding that this rule was not applicable to other statutory construction.

It is, therefore, our opinion that at noon, March 14, next, the present legislature will have been in session only sixty days. Apparently, however, if the legislature would be governed by precedent, it would adjourn not later than March 13, next. It would also have quite distinguished legal authority for such action.