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July 10, 2015

The Honorable Dawn Hill
The Honorable Thomas Saviello
Maine State Senate
3 State House Station
Augusta, ME 04333-0003

Dear Senator Hill and Senator Saviello:

You have inquired about the status of bills that were presented to the Governor but which he has neither signed nor vetoed. The Legislature has not adjourned *sine die*, and more than ten days have elapsed since certain bills were presented to the Governor.

Article IV, Part 3, Section 2, of the Maine Constitution states:

If the bill or resolution shall not be returned by the Governor within 10 days (Sundays excepted) after it shall have been presented to the Governor, it shall have the same force and effect as if the Governor had signed it *unless the Legislature by their adjournment prevent its return*, in which case it shall have such force and effect, unless returned within 3 days after the next meeting of the same Legislature which enacted the bill or resolution; if there is no such next meeting of the Legislature which enacted the bill or resolution, the bill or resolution shall not be a law. (Emphasis added).

The most recent act of the Legislature was to pass a joint order reciting "that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor." Joint Order S.P. 556, June 30, 2015 (copy attached). This joint order was a day to day adjournment, and not a final adjournment *sine die* of the first regular session of the Legislature, which would start the 90-day period for non-emergency bills to become effective under Article IV, Part Third, Section 16, allowing time for a people's veto effort under Article IV, Part Third, Section 17 ("recess of the Legislature" in these sections means "the adjournment without day of a session of the Legislature." *Opinion of the Justices*, 116 Me. 557, 587, 103 A. 761, 774 (1917); Article IV, Part Third, Section 20).¹

¹ Although literally "sine die" means simply "without day," in custom, practice and constitutional and historical context, of course, adjournment "sine die" has much greater significance than merely not scheduling a specific day to come back into session.

The adjournment order of June 30, 2015, has not prevented the Governor from returning the bills with his objections. To the contrary, the Legislature specifically envisioned receiving veto messages and made it clear in the joint order that they were prepared to deal with them in timely fashion, and possibly even line item vetoes requiring more immediate attention, allotting the full ten days authorized in the Constitution.

The Maine Constitution delegates to the Legislature the authority to “enact appropriate statutory limits on the length” of the first and second regular sessions. Article IV, Part Third, Section 1. The Legislature has done so by enacting Title 3 M.R.S. sec. 2. The determination of the length of the session is uniquely a legislative one, and for another branch of government to reinterpret the decision of the Legislature might well violate the provisions of Article III, Section 2 of the Maine Constitution. (“No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.” Cf. State v. Hunter, 447 A.2d 797 (1982)).

It is exclusively the Legislature that decides when it adjourns, not another branch of government, and there is no requirement that the Legislature set a specific date for the next meeting when it finishes its business of the day. Conversely, the failure to set a specific date for reconvening does not become an adjournment *sine die* by default.

In this instance, the Legislature invoked its constitutional authority and complied with the procedure in Title 3 M.R.S. sec. 2 by twice voting to extend the date of final adjournment by five legislative days each. See, Senate RC #288; House RC #296; HP 991, Joint Order Extending the First Regular Session of the 127th Legislature for Five Legislative Days; and remarks of Rep. Fredette, June 24, 2015. The second five-day period has not expired, nor has the Legislature used the extra day authorized by the same statute for “considering possible objections of the Governor to any bill or resolution presented to him by the Legislature under the Constitution, Article IV, Part Third, Section 2.” The first regular session of the 127th Legislature has not concluded and the Legislature specifically extended the time for final adjournment in order to review any additional line item vetoes, giving the Governor the time allotted to him under Article IV, Part 3, Section 2-A, and to consider any vetoes under Section 2, giving the Governor the full ten days to review enacted legislation.

The term “adjournment” must be read in the context of the constitutional passage in which it appears. The phrase “unless the Legislature by their adjournment prevent its return” means final adjournment or adjournment *sine die*, because a day to day adjournment does not prevent the return of bills, as the presiding officers may call the Legislature back to work at any time. In recent decades the Legislature has regularly adjourned until the call of the presiding officers for the purpose of acting on veto messages from the governor. See, e.g., Leg.Rec.-H-1361, June 1, 1997, Orders; Leg.Rec.-H-2699, April 28, 2000; Leg.Rec. H-1589, May 17, 2012. Bills that were vetoed and overridden became effective 90 days after adjournment *sine die*—at the same time as bills that were not vetoed—*not* 90 days after the day to day adjournments of the Legislature.

There is no ‘default’ provision whereby the end of a legislative day becomes a final adjournment simply because the Legislature has not said otherwise or has not set a specific date for the next meeting. To the contrary, when the Legislature adjourns its session *sine die*, it does

so deliberately, with a degree of formality befitting the occasion, each house sending a committee notifying the other body and sending a committee to officially notify the governor that they are ready for final adjournment so that he may confirm that there is no further business for them to address. (Historically, this practice goes back at least as far as 1850; see, e.g. House Jour. 1850, <http://lldc.mainelegislature.org/Open/LegJrnl/HJ1850.pdf>, pp. 521, 525 (copy attached); Senate Rec., p.453 March 27, 1897). The event is significant, the action intentional and formal because it starts the clock ticking for nonemergency legislation to become law in ninety days and it notifies citizens that they may then commence a people's veto effort under Article IV, Part 3, Section 17. It also signifies that any unfinished business on the calendar automatically expires,² that the Legislature does not anticipate any additional meetings and that it may not reconvene except by the special and somewhat cumbersome procedures of Section 1 of Article IV, Part 3.³ No such formal adjournment *sine die* occurred in the Maine Legislature on June 30, 2015.⁴

Common sense says that the term "adjournment" in Section 2, as amended in 1973, must be read to be consistent with the term "recess" in Section 16, enacted in 1909; otherwise, different ninety day periods would be invoked for many different bills. In any case, neither a recess per Section 16, nor an adjournment per Section 2 has occurred for the first regular session of the 127th Legislature.

Notably, the same provision of the Constitution that authorizes the Governor to veto, or "return" a bill with his objections, in calculating the ten-day period excepts Sundays and Saturdays only. The provision therefore envisions that the Governor could return bills with his objections—or vetoes—on Saturdays and holidays when the Legislature does not meet, still within that session of the legislature and before adjournment *sine die*. Thus the Legislature need not actually be meeting in order for the Governor to return a bill with his objections to the house in which it originated.

This reading is consistent with the term "adjournment" as it is used generally and in other sections of the Constitution when it refers to final adjournment of the legislative *session*, not simply a day to day adjournment of that particular legislative day. See, e.g., Tinkle, The Maine Constitution, p.79 ("if a final adjournment of the legislature intervenes during the period that the governor has to consider a bill, then he may pocket-veto it..."). See also, Mason's Manual of Legislative Procedure, 2010, p.295, Sec. 445 Motion to Adjourn Sine Die: "1. When a state legislature is duly convened, it cannot be adjourned sine die nor be dissolved except in the regular legal manner, and an adjournment from day to day cannot have that effect."⁵

² Mason's Manual of Legislative Procedure, 2010, Sec.445.3: "A motion to adjourn sine die has the effect of ...terminating all unfinished business...and all legislation pending upon adjournment *sine die* expires with the session."

³ "The Legislature may convene at such other times on the call of the President of the Senate and Speaker of the House, with the consent of a majority of the Members of the Legislature of each political party, all Members of the Legislature having been first polled."

⁴ This situation therefore is distinguishable from the facts addressed in the Opinion of the Justices, 437 A.2d 597 (1981), the Opinion of the Justices, 484 A.2d 999 (1984) and the 2003 and 2005 controversies during the Baldacci administration; in each of those cases, the Legislature expressly and distinctly adjourned *sine die*.

⁵ "Adjournment" as used in constitutional provisions "is generally held to relate to final adjournment rather than temporary adjournment or recess. Thus, a return of a bill after a temporary recess does not prevent the bill from becoming law." Singer & Singer, Sutherland Statutory Construction, §16.4, p. 740.

This reading is also consistent with the view adopted by the majority of jurisdictions which have construed similar state constitutional provisions and with interpretations of the comparable provision of the U.S. Constitution. See, e.g., NLRB v. Noel Canning et al., 573 U.S. _____, 134 S.Ct. 2550, 2574-76 (2014); Wright v. United States, 302 U.S. 583 (1938); State, ex rel. Gilmore v. Brown, 6 Ohio St. 3d 39, 40, 451 N.E.2d 235 (1983) (only adjournment *sine die* prevents delivery of Governor's veto message under Ohio Constitution); 1 Singer & Singer, Sutherland Statutory Construction § 16.4 (7thed). Finally, it is consistent with the historical practice of every legislature and every governor, including the present Governor, in recent memory, and it is consistent with the determination of the effective dates of enacted legislation under the Maine Constitution.

The Constitution requires that the Governor "return" a bill "with objections to the House in which it shall have originated" within ten days for the legislature's consideration of his veto. This provision clearly envisions a physical delivery of the bill with a veto message to the legislative branch within the ten day time frame.

Bills that have not been returned to the Legislature with the objections of the Governor within ten days of being presented to the Governor, excluding Sundays, have now become finally enacted in accordance with Article IV, Part 3, Section 2. Those that are emergency bills are in full force and effect.

I trust this answers your inquiry.

Yours very truly,



Janet T. Mills
Attorney General

JTM/elf

cc: President Michael Thibodeau
Sen. Garrett Mason
Sen. Andrea Cushing
Sen. Justin Alford
Speaker Mark Eves
Rep. Jeff McCabe
Rep. Sara Gideon
Rep. Kenneth Fredette
Rep. Ellie Espling
Heather Priest, Secretary of the Senate
Rob Hunt, Clerk of the House
Grant Pennoyer, Executive Director of the Legislative Counsel
Paul R. LePage, Governor

**STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
FIRST REGULAR SESSION
SENATE ADVANCED JOURNAL AND CALENDAR**

Tuesday, June 30, 2015

SUPPLEMENT NO. 31

ORDERS

Joint Order

(4-1) On motion by Senator MASON of Androscoggin, the following Joint Order:
S.P. 556

Ordered, the House concurring, that when the House and Senate adjourn they do so until the call of the President of the Senate and the Speaker of the House, respectively, when there is a need to conduct business, or consider possible objections of the Governor.

814
Chapman, Danforth, Dennett, Durin, Garland,
Gentness Gilman, M. A. Goodwin, Haines,
Hathorn, Hayden, Hayes, Holbrook, Holmes,
Hornard, Hurston, Jordan, Leighton, Lord,
Littlefield, McIntyre, Mitchell, Percival,
Pineham, W. Plummer, Putnam, Rogers,
Sewall, Simons, Stanley, Totten,
Waterhouse, W. Wood, Whittier, Witsenlauf,
Young,

Kays
Alexander, Ames, Arnold, Carrisbell,
J. Chase, Cochran, Cox, Cunningham,
M. J. Davis, Dudley, Gordon, Hall, Hancock,
Higgins, Holway, Hopkins, King, Snowton,
Lane, Mason, Milliken, J. Mott, Merrill,
Norcross, Perry, W. Plummer, Putnam,
Quint, Reed, Sargent, W. Smith, Shafter,
Vickroy, Walker, J. Wood, Higgins, Wells,
York,

The House joined Messrs Sewall,
M. Smith, Jordan, Appleton, Merrill to
the Committee to wait on the Governor, and
inform him that the two Houses have
acted on all business before them, and
are now ready to adjourn.

The Committee subsequently reported
that the Governor had no further com-
munications to make, except to com-
municate the title of acts resolved by
them signed.

Mr. Appleton of Bangor, the Speaker
having left the Chair on account of
indisposition, rose and said—

323

Mr. Sewall of Oldtown was charged
with a Message to the Senate informing
that body that the House had acted
upon all Business before it and is now
ready to adjourn without day.

A similar message was received
from the Senate,

On motion of Mr. Sewall of Oldtown
the House then adjourned without day.

E. W. Hays Secy