

PRESENTATION OF BILLS TO THE GOVERNOR

This memorandum addresses the issue of whether the Governor may refuse to accept a bill signed by the presiding officers of the House of Representatives and Senate and presented to the Governor for approval. This issue arose as a result of news stories concerning the Governor of Minnesota making himself unavailable to accept a bill enacted by the Minnesota Legislature. According to a news article in *The Forum*, dated February 22, 2002, the Governor's office was locked at 5:20 p.m. on Thursday, February 21, 2002, and legislative leaders expressed concern over the nonavailability of the Governor, as time was critical regarding the effectiveness of the enacted legislation. According to a news article in *The Forum*, dated February 23, the Governor's office accepted the bill after 9:00 a.m. on Friday, February 22. This memorandum addresses the effect of a similar event in North Dakota.

CONSTITUTIONAL PROVISIONS

Article IV, Section 13, of the Constitution of North Dakota provides, in part:

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

...

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. . . .

Article V, Section 9, of the Constitution of North Dakota provides:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If, by a recorded vote,

two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days *after its delivery to the governor*. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, *after its delivery to the governor*. (emphasis supplied)

Therefore, although there is a constitutional requirement that bills must be presented to the Governor, no constitutional provision directly requires the Governor to accept a bill passed by the Legislative Assembly. Section 7 of Article V provides, however, that the Governor "shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed."

STATUTORY PROVISIONS

North Dakota Century Code (NDCC) Section 9-01-01 defines an obligation as a legal duty by which a person is bound to do or not to do a certain thing. Arguably, the constitutional provision concerning presentation of bills to the Governor imposes an obligation to receive those bills. Section 9-07-22 provides:

If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act in its nature is capable of being done instantly, as for example if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

North Dakota Century Code Section 54-07-01.5 provides:

The governor shall cause each bill passed by the legislative assembly and not vetoed by the governor to be filed with the secretary of state within five legislative days after the bill has been delivered to the governor. If the legislative assembly is not in session, the governor shall cause each bill delivered to the governor to be filed with the secretary of state within fifteen days, Saturdays and Sundays excepted, after delivery of the bill to the governor.

North Dakota Century Code Section 54-07-01.5 was enacted in 1987. This section was recommended by the Legislative Procedure and Arrangements Committee as a result of the committee's study of the new Article IV of the Constitution of North Dakota, which was approved at the 1984 primary and general elections and which became effective December 1, 1986. One of the primary reasons for that recommendation was because the new Article IV provided for laws to become effective on July 1 after their filing with the Secretary of State or 90 days after their filing or upon filing if an emergency measure. The new Article IV, however, only specified that the Governor had to file a bill vetoed after adjournment of the Legislative Assembly. Thus, Section 54-07-01.5 was recommended to fill the void as to the filing of bills delivered to the Governor which were not vetoed after adjournment.

RECEIPT OF BILL BY GOVERNOR

Although no decision of the North Dakota Supreme Court has been found which addresses the issue of whether the Governor may refuse to accept a bill duly presented for signature, court decisions in other states have addressed this issue.

The Supreme Court of Illinois in *People ex rel. Erskine v. Hughes*, 373 Ill. 144, 25 N.E.2d 801 (1940), determined that the argument that the Governor has the power to refuse to accept a bill presented to him is without merit. The constitutional provision relevant to this case provided that if any bill is not returned by the Governor to the house in which it originated within 10 days (Sundays excepted) after presentation, it is to be law as if signed by the Governor. The court said:

The Constitution provides that every bill, before it becomes a law, shall be presented to the Governor. His only power is either to sign it, return it with his objections, or allow it to become law by failure to return it within ten days after it is presented to him. He has no power to take any other action concerning such a bill. It necessarily follows that he has no discretion about receiving when it is presented to him.

Assuming, *arguendo*, that the North Dakota Supreme Court would reach a similar conclusion, a question may arise as to when may a bill be presented to the Governor.

The Supreme Court of Alabama, in *Opinion of the Justices*, 412 So.2d 279 (Ala. 1982), was asked whether two bills had been delivered to the Governor in accordance with constitutional requirements, thereby starting the period of time during which the Governor has the right to consider a bill without its becoming a law independently of his signature. The constitutional provision relevant to this case provided:

Every bill which shall have passed both houses of the legislature, except as otherwise provided in this

Constitution, shall be presented to the governor; if he approves, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal and proceed to reconsider it. . . . If any bill shall not be returned by the governor within six days, Sundays excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the legislature, by its adjournment, prevent the return, in which case it shall not be a law; but when return is prevented by recess, such bill must be returned to the house in which it originated within two days after the reassembling, otherwise it shall become a law, but bills presented to the governor within five days before the final adjournment of the legislature may be approved by the governor at any time within ten days after such adjournment, and if approved and deposited with the secretary of state within that time shall become law. (emphasis supplied)

The Supreme Court of Alabama said in determining the circumstances relating to the presentment of the bills, it is limited to the facts as revealed by the journals of the legislature. The journals showed the bills received the approval of both houses and were signed by the presiding officers. The journals also contained a communication from the enrolling and engrossing clerk of the Senate which stated the clerk attempted to deliver the bills at 11:45 a.m. on Thursday, but the door to the Governor's office was locked; again attempted to deliver the bills to the Governor's office at 12:00 noon, but the doors were locked; again attempted to deliver the bills at 12:01 p.m., but the doors were locked; and again attempted to deliver the bills at 3:15 p.m., but the doors were locked. The court cited previous judicial decisions indicating that deliberate acts on the part of the Governor, or those authorized by him to receive bills from the legislature, to avoid presentation of bills constitute constructive presentation within the requirements of the constitution if a bona fide effort was made to actually deliver the bills. The court took judicial notice that the Thursday in question was not a state holiday and had not been proclaimed as such by the Governor and that all times mentioned by the clerk were within normal business hours of the state. The court said:

Although nothing in the Constitution prevents the Governor from fixing his office hours as he wishes, he cannot thereby thwart the constitutional process by which legislation becomes law. "Presentment" to the Governor of bills is a constitutional requirement in this process and, because it is, an important constitutional issue is presented by the request for our advisory opinion. Under the circumstances reflected by the Senate journal, we hold that the Senate's attempt was a presentment in a

constitutional sense, and the fact that the offices were closed did not render ineffective this presentment.

To hold otherwise would give the Governor the power to control the presentment of bills to him, thereby undermining the intent of that portion of [citation omitted] the constitution which reads:

If any bill shall not be returned by the governor within six days, Sunday excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the legislature by its adjournment, prevent the return, in which case it shall not be a law. . . .

This sentence mandates the Governor must act, in the use of his veto power, not within six days of his actual reception of a bill, but within six days of its presentment to him. If it were the former, the Governor might wait until within six days of the adjournment of the legislature to receive the bill, thereby preventing its return due to the adjournment and, thus, defeating its becoming a law, or return it with a veto message just prior to adjournment, thereby preventing action on the veto by the two houses. Either of these actions would effectively prevent the legislature's having the final action on the bill as was intended by the Constitution.

For the presentment to be fulfilled, i.e., the formal offer or tender of the bill to the Governor, there is no requirement that he actually receive it. From that moment of formal tender, the clock begins to run and he must act, if he intends to veto, within the prescribed six days.

CONCLUSION

There is no constitutional provision specifically requiring the Governor to receive bills. Although there is a statutory provision requiring the Governor to file bills with the Secretary of State, there is no similar provision requiring the Governor to receive bills presented by either house of the Legislative Assembly. Although no judicial opinion in North Dakota directly addresses the issue of when the Governor must receive a bill presented by the Legislative Assembly, court decisions in other states support the position that regular presentment to the Governor constitutes delivery.

To clarify the issue in North Dakota, the Legislative Assembly could enact a statute similar to NDCC Section 54-07-01.5, providing that the Governor must accept delivery of bills presented during regular business hours. Under current practice, the Governor's office normally works with the House of Representatives and Senate to coordinate delivery of bills to those times when the Governor is able to give due consideration, e.g., delivery is normally not made immediately before the Governor is scheduled to be out of the office for several days.