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SPRINGFIELD

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File No. S-725

CONSTITUTION:
Effective date of legislation

Honorable Peter Woods
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Dear Mr. Woods:

I have the letter of your predecessor wherein he
states:

"I request your opinion as to the effective
date of the new Capital Punishment Bill,
House Bill No. 18 of the 78th General Assembly,
certified by the Governor November 8, 1973."

For the reasons that follow, I am of the opinion that
the effective date of House Bill 18 is July 1, 1974.

House Bill 18, which establishes the penalty of capital
punishment for specified categories of the crime of murder,

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was originally passed by the 78th General Assembly on June 30, 1973. On September 12, 1973, the Governor, pursuant to the amendatory veto section of the Illinois Constitution of 1970 (Ill. Const. art. IV, sec. 9(e)), returned House Bill 18 to the House of Representatives with specific recommendations for change. Motions to accept the Governor's recommendations for change were approved by the House of Representatives on October 22, 1973, and by the Senate on October 31, 1973. The Governor certified on November 8, 1973, that the acceptance by both Houses conformed with his recommendations.

House Bill 18, as finally certified by the Governor, is also identified as Public Act 78-921.

The changes recommended by the Governor and accepted by both Houses of the 78th General Assembly were substantive in nature. The deletions recommended by the Governor reduced the number of specific categories of murder which required the mandatory imposition of the death penalty. Originally, House Bill 18 outlined 11 categories of murder that required the mandatory imposition of the death penalty; now, House Bill 18 (Public Act 78-921) contains six such categories. The

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additions to House Bill 18, which were recommended by the Governor, were also substantial in their effect upon the import of House Bill 18.

House Bill 18, as finally certified by the Governor, does not specifically provide for an effective date.

There are several provisions of the Illinois Constitution of 1970 which are relevant to the question raised by your predecessor. Section 9(a) of article IV of the Illinois Constitution of 1970 reads as follows:

"(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law."

Section 9(e) of article IV of the Illinois Constitution of 1970 reads as follows:

"(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations,

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the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated."

Section 10 of article IV of the Illinois Constitution of 1970 reads as follows:

"The General Assembly shall provide by law for a uniform effective date for laws passed prior to July 1 of a calendar year. The General Assembly may provide for a different effective date in any law passed prior to July 1. A bill passed after June 30 shall not become effective prior to July 1 of the next calendar year unless the General Assembly by the vote of three-fifths of the members elected to each house provides for an earlier effective date."

Pursuant to the provisions of section 10 of article IV of the Illinois Constitution of 1970, the 77th General Assembly passed, and the Governor approved, "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, pars. 21 et seq.) Until recently, section 1 of said Act read as follows:

"§ 1. A law passed prior to July 1 of a calendar year and after June 30, 1971, shall become effective on October 1 following its becoming a law unless by its terms it specifically provides for a different effective date. A law passed prior to July 1, 1971, shall become effective on July 1, 1971, or upon its becoming a law, whichever is later, unless such law by its terms specifically provides for a different effective date."

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Public Act 78-85, which became effective on July 13, 1973, amends section 1 of "AN ACT in relation to the effective date of laws" and adds sections 2, 3, 4, 5 and 6 thereto.

Now, section 1, as amended, reads:

"(a) A bill passed prior to July 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on October 1 of that year if October 1 is the same as or subsequent to the date the bill becomes a law; provided that if October 1 is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date.

(b) A bill passed prior to July 1 of a calendar year that does provide for an effective date in the terms of the bill shall become effective on that date if that date is the same as or subsequent to the date the bill becomes a law; provided that if the effective date provided in the terms of the bill is prior to the date the bill becomes a law then the date the bill becomes a law shall be the effective date."

Section 3 pertains to the effective date of laws. It reads:

"For the purposes of determining the effective dates of laws, a bill is 'passed' at the time of its final legislative action prior to presentation to the Governor pursuant to paragraph (a) of Section 9 of Article IV of the Constitution."

Applying section 3 to House Bill 18, it is possible to reach two conclusions as to the effective date of House Bill

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18. One, House Bill 18 is effective on November 8, 1973;
two, House Bill 18 is effective on July 1, 1974. Obviously,
House Bill 18 has only one lawful effective date.

Two conclusions on the effective date of House Bill 18 are possible because the phrase "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of section 9 of article IV of the Constitution", which determines when a bill is "passed", is ambiguous and capable of two constructions. It should be remembered, however, between two possible constructions of a statute, one rendering it constitutional and the other unconstitutional, the courts will favor that construction rendering it constitutional. Time, Inc. v. Hulman, 31 Ill. 2d 344, 353.

One, section 3 may be construed in such a manner that the phrase "final legislative action prior to presentation to the Governor" includes only three possible situations: (1) Passage on third reading in the second house; (2) concurring in or receding from an amendment; or (3) adoption of a conference committee report. Utilizing this construction of section 3, House Bill 18 was "passed" on June 30, 1973. Section 1 of

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the Act, as amended, provides that if October 1 is prior to the date the bill becomes a law, then the date it becomes a law shall be the effective date. Section 5 of the Act describes when a bill becomes a law in the following manner: "A bill 'becomes a law' pursuant to Sections 8 and 9 of Article IV of the Constitution." (Public Act 78-85.) Section 9(e) of article IV of the Illinois Constitution of 1970 provides that if the General Assembly accepts the Governor's recommendations for change, the bill shall be presented again to the Governor and if he certifies that the General Assembly has complied with his recommendations, then, the bill shall become a law. Regarding House Bill 18, the Governor certified that the General Assembly had complied with his recommendations for change on November 8, 1973. Therefore, House Bill 18 became a law on November 8, 1973, and if the aforementioned construction of section 3 was proper, House Bill 18 would be effective on November 8, 1973.

In attempting to determine the effective date of a bill that the Governor had returned to the General Assembly for change pursuant to his amendatory veto powers, the Illinois Supreme Court in People ex rel. Klinger v. Howlett, 50 Ill.

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2d 242, has shed some light on the meaning of the word "passed" as used in section 10 of article IV of the Illinois Constitution of 1970. In Klinger, at page 247, the Illinois Supreme Court relying heavily on Board of Education v. Morgan, 316 Ill. 143, states:

" * * * Read as a whole, the opinion in Morgan defines the time when a bill is passed as the time of the last legislative act necessary so that the bill would become law upon its acceptance by the Governor without further action by the legislature. We continue to adhere to this definition. In the present situation the last act of the legislature which permitted the Governor to make the bills become law by his acceptance was the vote of the houses of the General Assembly which approved the Governor's changes in the bills. For the purpose of section 10 of article IV, these bills were 'passed' on October 28, 1971, when the House voted to accept the Governor's executive amendment after the Senate had already done so. Any other definition of the word 'passed' which fixed an earlier time would require this court to rule that the bills were passed before the legislature ever considered them in their final form, indeed before they were written. Nothing in the constitution of 1970 suggested that the word 'passed' was used in such an artificial and abnormal sense."

The last legislative act necessary so that House Bill 18 could become a law took place on October 31, 1973, when the Senate voted to accept the Governor's recommendations for

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change after the House of Representatives had already done so. Then, on November 8, 1973, the Governor certified that the General Assembly had accepted his recommendations for change. Pursuant to section 9(e) of article IV of the Illinois Constitution of 1970, this certification allowed House Bill 18 to become a law.

As indicated earlier, section 3 is capable of two constructions. The second construction would allow a fourth category to be included in the phrase "final legislative action prior to presentation to the Governor: (4) acceptance of the Governor's specific recommendations for change." By construing section 3 so that final legislative action prior to presentation to the Governor includes that time when the General Assembly accepts the Governor's specific recommendations for change, section 3 is brought into harmony with section 10 of article IV and Klinger v. Howlett, 50 Ill. 2d 242. Thus, the effectiveness of section 3 is preserved by the adoption of this second construction. Furthermore, since section 9(e) of article IV of the Illinois Constitution of 1970 states that once the General Assembly accepts the Governor's specific recommendations

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for change the bill "shall be presented again to the Governor", it seems reasonable that reference to section 9(a) of article IV would include the second presentation to the Governor as well as the first.

I am of the opinion that the phrase "final legislative action prior to presentation to the Governor pursuant to paragraph (a) of section 9 of article IV of the Constitution" encompasses the following four situations:

- (1) Passage on third reading in the second house;
- (2) Concurring in or receding from an amendment;
- (3) Adoption of a conference committee report;
- (4) Acceptance of the Governor's specific recommendations for change.

Pursuant to section 10 of article IV of the Illinois Constitution of 1970 and section 3 of "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, par. 23) House Bill 16 was passed on October 31, 1973. Pursuant to section 10 of article IV of the Illinois Constitution of 1970 and section 2 of "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, par. 22), House Bill

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18 is effective on July 1, 1974.

This opinion is not to be construed as an approval or disapproval of the constitutionality of the procedures by which the General Assembly accepted the Governor's specific recommendations for change and the certification by the Governor that the General Assembly had accepted his specified recommendations for change. Furthermore, this opinion is not to be construed as an approval or disapproval of the constitutionality of the substantive provisions of House Bill 18 or any part thereof.

Very truly yours,

A T T O R N E Y G E N E R A L