WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

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FILE NO. S-890

CONSTITUTION:
Effective Date of Laws
Veto Override

Honorable William C. Harris
Senate Minority Leader
Room 309 State Capitol
Springfield, Illinois 62706

Dear Senator Harris:

This responds to your request for an opinion as to the effective date of Senate Bill 408 (Public Act 78-1257). This bill passed the House on June 28, 1974, by a vote of 112 to 10 and passed the Senate on June 30, 1974, by a vote of 30 to 20 and was subsequently sent to Governor Walker on July 16, 1974. The Governor, under his general veto power, vetoed the bill on September 13, 1974. The vote to override the veto passed in the Senate on November 21, 1974, and in the House on December 5, 1974. The bill has no effective date provision.

You have also asked me to set forth how People ex rel. Klinger v. Howlett, 50 Ill. 2d 242, and section 3 of "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, par. 23) apply to the effective date of a vetoed bill which "passed" the General Assembly prior to July 1 but received final action by the General Assembly after June 30 in the following situation:

1. The override of an amendatory veto.
2. The acceptance of an amendatory veto.
3. The restoration of an item veto.
4. The restoration of a reduction veto.

Finally, you also ask whether the answers to any of the foregoing questions would change "if the section 23 passage prior to July 1 were by a vote of at least 3/5ths of each House."

The date a bill becomes law is distinct from the date a law becomes effective. A bill becomes law on the date when the legislative and executive procedures required by the Constitution have been completed. A law becomes effective on the specific date when it becomes operative and has force and

power. Such effective date is determined by the constitutional and statutory provisions quoted below.

The constitutional provisions relating to effective dates are found in section 10 of article IV of the Illinois Constitution of 1970, which provides 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." (emphasis added.)

Pursuant to this constitutional mandate, the General Assembly enacted "AN ACT in relation to the effective date of laws". (Ill. Rev. Stat. 1973, ch. 131, pars. 21 et seq.) Sections 1, 2 and 3 of that Act, as amended (Ill. Rev. Stat. 1973, ch. 131, pars. 21, 22 and 23), provide as follows:

> "§ 1. (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.
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> (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.
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> § 2. A bill passed after June 30 of a calendar year shall become effective on July 1 of the next calendar year unless the General Assembly by a vote of three-fifths of the members elected to each house provides for an earlier effective date in the terms of the bill or unless the General Assembly provides for a later effective date in the terms of the bill; 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.
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> § 3. For purposes of determining the effective date 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."

The constitutional provisions relating to a bill becoming law are found in sections 8 and 9 of article IV of the Illinois Constitution of 1970. The relevant portions provide as follows:

"Section 8.

* * *

(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. * * *

(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.

* * *

The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

Section 9.

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

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. * * *

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-

> fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.
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> (d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.
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> (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, 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." (emphasis added.)

Before discussing the effective dates of laws which became such by the override of a veto or by acceptance of the Governor's recommendations, a discussion of the effective dates of laws which became such by other means would be beneficial.

Most bills passed by the General Assembly become laws upon signature by the Governor, as provided in section 9(a). Bills may become law without signature by the Governor under section 9(b) when he neither vetoes nor signs them upon the lapse of 60 days after their presentation.

The word "passed", as used in section 9(a) of the Illinois Constitution of 1970, carries with it the same connotation as that word carried under the Constitution of 1870 as defined and applied in the case of Board of Education v. Morgan, 316 Ill. 143. In Morgan, the Supreme Court of Illinois was asked to determine the effective date of an act passed by the General Assembly on June 19, 1923, and approved by the Governor on July 2, 1923. The provisions of section 13 of article IV of the Illinois Constitution of 1870 combined the requirements for "passage" of bills and the effective date of laws. That section read in part:

> "Every bill shall be read at large on three different days, in each house; and the bill and all amendments thereto shall be printed before the

> vote is taken on its final passage; and every bill, having passed both houses, shall be signed by the speakers thereof. * * * And no act of the general assembly shall take effect until the first day of July next after its passage, unless, in case of emergency, (which emergency shall be expressed in the preamble or body of the act), the general assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct."

The Supreme Court concluded that the bill had "passed" at the time of the last action by the legislature pursuant to section 13, which was taken on June 19, 1923, and that the bill became law and was effective when signed by the Governor on July 2, 1923. The court stated at page 147:

> "* * * The words 'passage' and 'passed,' as used in the three places mentioned in sections 12 and 13, other than in the phrase in question, and as used in section 16, clearly refer only to the passage of bills by the General Assembly. No reason appears for giving to the term a different meaning when used in the phrase in question from that which it bears in the other places. The subject matter of the provision is the time when an act of the General Assembly shall take effect. That time is declared to be the first day of July next after its passage, and the obviously natural meaning of the words, in the absence of anything showing the contrary, is, after its passage by the General Assembly. * * *"

The debates at the 1970 Constitutional Convention disclose no intent to alter the established definition of the word "passed" as used in similar provisions of the 1870 Constitution. Thus, Proposal No. 10 of the Committee on Style, Drafting and Submission explained the inclusion of the word "passed" in section 10 of article IV as follows:

> "The word 'passed' is used because the key to the June 30 cut-off is the action of the General Assembly, not the action of the Governor. (See, Braden and Cohn, p. 167 and cases cited.)" (VI Proceedings 1556) (See, also, IV Proceedings 2701, 2702, 2886, 2888, 2898.)

It is clear from People ex rel. Klinger v. Howlett, supra, that the Supreme Court has adhered to the definition of "passage" as defined in Board of Education v. Morgan, supra. In Klinger the court stated:

> "* * * 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. * * *"

Thus, with respect to a bill which contains no

effective date and was passed by the General Assembly pursuant to section 8 prior to July 1 and was signed by the Governor after June 30 pursuant to section 9(a), the "time of passage" under section 10 is prior to July 1 and the bill becomes effective on the uniform effective date as provided by the General Assembly, which is October 1.

The problem raised by your question is whether vetoed bills, containing no effective date, "passed" under the provision of section 8 of article IV of the Illinois Constitution of 1970 by the General Assembly before July 1, and which are overridden pursuant to section 9(c) of article IV of the Constitution but not until after July 1, have effective dates pursuant to the provisions of section 10 of article IV, of July 1 of the following calendar year on the theory that such bills are not "passed" until the legislature overrides the veto; or whether such bills are effective on October 1 or upon becoming law under the provisions of "AN ACT in relation to the effective date of laws" (Ill. Rev. Stat. 1973, ch. 131, pars. 21 et seq.), which was enacted pursuant to section 10, on the theory that

such bills are "passed" at the time such a bill was "passed" under section 8. Except for one distinction in regard to the restoration of a reduction veto, the procedures for the override of item, reduction and amendatory vetoes contained in sections 9(d) and (e) refer back to and incorporate the procedure for the override of a general veto contained in section 9(c). Thus, the answers to your questions depend on the definitions of the terms "passage" or "passed" as used in sections 8, 9(a) and 10 and the term "passes" as used in section 9(c).

It is a cardinal rule of statutory and constitutional construction that where a word has been used more than once in an instrument, it is presumed to have been used with the same meaning throughout unless there is something to show that a different meaning was intended. (Chapman v. Will County, 55 Ill. 2d 524.) Thus, attention is drawn to the question of whether there is anything to indicate that the word "passes" as used in section 9(c) is used in a different sense than that

in which the terms "passed" and "passage" are used in sections 8, 9(a) and 10.

As the procedure set forth in section 9(c) to override a veto culminates in a bill becoming a law, it represents an alternative to the methods of a bill becoming a law by the signature of the Governor, or by the lapse of a 60 day period after presentation to the Governor when he neither signs nor vetoes the bill. The general override procedure is distinct from the procedure outlined in section 8. Section 8 deals solely with the legislative activity in the initial consideration and passage of a bill. Final legislative action under section 8 is never sufficient in and of itself for a bill to become law. The override procedure is not so much an act of legislation as it is an act which substitutes for, or takes the place of, the Governor's power to approve a bill so that it will become law. (See, McMillan v. The State, (Ala. App.) 147 So. 200.) The power of the Governor to approve or disapprove a bill in whole or in part is not the power to enact or create new legislation. (Bengston v. Secretary of Justice, 299 U.S. 410; State ex rel. Segal v. Kirkpatrick, (N.M.) 524 P. 2d 975, 981;

State ex rel. Cason v. Bond, (Mo.) 495 S.W. 2d 385, 392.) Thus, the override vote is no more an element of final passage than the Governor's signature, which was expressly held not a part of final passage in Board of Education v. Morgan, supra.

Thus, within the context of section 9(c), the term "passes" carries the connotation of "reaffirm", and involves an act by a legislative body of voting to override a veto and not a final legislative act in the constitutional process of "passing" a bill. This distinction between the passage of a bill and the vote to override a veto is significant and supports the proposition that in section 9(c) the term "passes" does not have the specific legal definition given the word in Board of Education, supra, and is not synonymous with "passed" or "passage" as used elsewhere. This proposition then supports the further proposition that the "time of passage" for the purpose of determining the effective date of laws which become such by the override of the Governor's veto, is the time when the bill was passed by the General Assembly pursuant to section 8, and not the time of the vote to override.

Another fundamental rule of statutory construction is that where language utilized in a statute admits of two possible constructions, one of which will lead to absurd, inconvenient, mischievous or unjust consequences, courts are bound to presume that such consequences were not intended, and will adopt a construction that is reasonable, practical and uniform (Halberstadt v. Harris Trust & Savings Bank, 55 Ill. 2d 121), even though such construction qualifies the universality of the language. (City of Elmhurst v. Buettgen, 394 Ill. 248, 253.) The rules of statutory construction apply to the construction and interpretation of a constitution, as well. Johnson v. State Electoral Bd., 53 Ill. 2d 256, 258.

One obvious effect of adopting a construction of "passed" as used in section 10 which would require determining that the time of passage is the time of the override vote, would be the delay of the effective date of the bill, which had initially passed the General Assembly in accordance with section 8 prior to July 1, until the following July 1. In the case of appropriation bills which contain no effective dates,

such a deferment of effectiveness could be the equivalent of an absolute veto and would amount in effect to total defeat of the legislation. I realize that generally, if not always, appropriation bills have contained a specific effective date.

It should be noted that under the language of section 9, the procedure to override the veto of an appropriation bill is identical to the override procedure for all other bills. There is no constitutional provision which requires a different treatment for the two types of bills. Thus, the same rule as to time of passage in determining effective dates under section 10 must apply to appropriation bills and other bills which become law upon the override of a gubernatorial veto.

It is no answer to assert that by the same three-fifths vote required to override a vetoed bill, a bill could be given a specific effective date under section 10 or that an effective date previously contained in a bill would be the effective date. This proposition raises a separate question, namely, whether legislative action concerning effective dates can be taken concurrently with a vote on a motion to override. This question is not involved in this opinion.

Even if such a legislative addition by a three-fifths vote were possible, it would raise a further problem. Under section 9(d) an item subjected to a reduction veto may be restored to its original amount in the same manner as a vetoed bill except that the required vote to override is only a majority of the members elected to each house and not the three-fifths as required to override a general, item or amendatory veto. Such an interpretation thus could nullify the express policy of section 9(d), as stated in the debates, to permit ease of legislative reinstatement of such a reduction by requiring a constitutional majority rather than a three-fifths vote of the members of each house. III Proceedings 1338, 1350-1353; V Proceedings 4084-4085; VI Proceedings 402.

It would thus appear that a construction of section 10 so that final passage for purposes of ascertaining the effective date of bills which have been overridden by the General Assembly would be the time of the override vote of the second house under section 9(c) instead of the original passage of the bill by the legislature under section 8, would lead to harsh and absurd consequences and should be avoided.

Furthermore, a construction of the term "passed" as used in section 10 to refer to "passage" or "passed" as used in sections 8 and 9(a) and not to "passes" as used in section 9(c), is consistent with the definition of the term "passage" as stated in People ex rel. Klinger v. Howlett, supra.

In Klinger, the Supreme Court considered the effective date of a bill which had been passed under section 8 prior to July 1 but did not contain an effective date. The Governor, acting pursuant to his amendatory veto powers, returned the bill with extensive recommendations for change. The General Assembly accepted the Governor's recommendations by a record vote of a constitutional majority and the bill was sent back to the Governor who certified that the changes conformed to his recommendations. The Supreme Court held that the bill "passed" under section 10 of article IV when the General Assembly accepted the Governor's recommendations, and not when originally passed before its initial presentation to the Governor.

As previously quoted, the court in Klinger, supra, defined "the time of passage" of a bill as "the time of the last legislative act necessary so that the bill will become law

upon its acceptance by the Governor without further action of the legislature." The court was concerned that under another definition a bill could be considered passed before it is in final form. It stated at page 247:

> "* * * 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.
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> * * *

That concern is quite proper with respect to acceptance of recommended changes pursuant to an amendatory veto. Obviously, a bill which is materially and substantively changed pursuant to the Governor's amendatory veto is no longer the same bill as the one which initially "passed"

under section 8 of article IV before initial delivery to the Governor. This is not a concern, however, when the legislature overrides a general, item, reduction or even amendatory veto, for it is not enacting substantive changes in the bill but is rather reaffirming, by a larger majority in most instances, the identical language previously considered.

The Klinger court defined "passage" of a bill as follows: "The time when a bill is passed is the time of the last legislative act necessary so that the bill will become law upon its acceptance by the Governor without further action of the legislature." With respect to the override of a general, item, and reduction veto, the last legislative act prior to acceptance by the Governor will always be final passage of the bill under section 8 without further action. The vote to override cannot be a legislative activity which takes place prior to gubernatorial presentation because under no circumstances will the bill be presented to the Governor for his acceptance after the vote on a motion to override.

To summarize then, "passed" as used in the effective date of laws provisions of the Illinois Constitution of 1970

refers to the final substantive action of the General Assembly, not to the procedural action of voting to override a veto. With the exception of bills altered by the amendatory veto process, the controlling meaning of "passed" or "passage" will be the passage by the General Assembly pursuant to section 8 of article IV preliminary to the initial delivery of a bill to the Governor.

It is therefore my opinion that the effective date of Senate Bill 408 (Public Act 78-1257) is December 5, 1974, the date on which the General Assembly completed its override of the Governor's general veto of that bill. This is so because the bill was passed prior to July 1, 1974, and became law with the completion of the override procedure. Under the provisions of "AN ACT in relation to the effective date of laws", supra, a bill passed prior to July 1, containing no effective date, becomes effective on October 1 or on its becoming law, whichever is later.

I am of the further opinion in answer to your other questions that:

1. In the case of an override of an amendatory veto, the final vote of the second house completing the override process causes the bill to become law in the same manner as the override of a general veto. It is passed when the original substantive legislative action under section 8 of article IV occurred preceding the bill's submission to the Governor for signature. Thus, a bill passed before July 1, containing no effective date, in accordance with the provisions of "AN ACT in relation to effective date of laws", supra, will be effective either on October 1 or when it became law, whichever is later. The Klinger case does not affect this result.

2. In the case of acceptance of gubernatorial recommendations pursuant to an amendatory veto, the revised bill becomes law when the Governor certifies that his recommendations have been accepted by the General Assembly. Such a bill will be deemed to have passed for purposes of determining the effective date when the General Assembly accepts the Governor's recommendations. Such result is required by the Klinger case. As I previously advised in opinion No. S-725, the provisions of "AN ACT in relation to effective date of laws", supra,

are sufficiently broad to apply to the acceptance of recommendations pursuant to an amendatory veto. Thus, a bill containing no effective date initially passed before July 1, but which was changed pursuant to the amendatory veto after June 30, will not be effective until the next July 1.

3 and 4. The rules for determining the dates of passage and the effective dates of laws in those cases involving the override of an item veto or the restoration of a reduction veto are the same as those applicable to laws involving the override of a general or amendatory veto.

Finally, the fact that a bill may have passed prior to July 1 by a vote of three-fifths of the members elected to each house would not affect my answers to your questions. The three-fifths vote is significant (other than to override a veto) only when the legislature wants to provide for an earlier effective date within a bill passed after June 30. Of course, in such a situation, the questions which you have posed would not arise since those questions are premised upon the fact the bills were passed before July 1 and the lack of a specified effective date within the bills.

Very truly yours,

ATTORNEY GENERAL