

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 30, 2009

Opinion No. 09-139

Effective Date of 2009 Tennessee Public Acts, Chapter 585

QUESTION

Chapter 585 of the 2009 Tennessee Public Acts amends Tenn. Code Ann. § 39-15-401(a) and (b) (2006 & Supp. 2008), relating to the criminal offenses of child abuse and child neglect or endangerment. The act became law on July 6, 2009, when the governor signed it. However, the act specifies that it “shall take effect on July 1, 2009, the public welfare requiring it.” Because it is impossible for a bill to go into effect before it becomes law, the effective date specified in the act is a nullity. Consequently, under Article II, § 20, of the Constitution of Tennessee, the effective date of the act is forty days after the bill became law.¹ Thus, the effective date of Chapter 585 is August 15, 2009, which is a Saturday. Does an act take effect on a Saturday, Sunday, or legal holiday if the forty-day period under Article II, § 20, ends on such a day?

OPINION

Yes. If the forty-day period prescribed by Article II, § 20, ends on a Saturday, Sunday, or legal holiday, the act takes effect on that day.

ANALYSIS

Under the Tennessee Constitution, supreme authority rests in the people, and it is their intent in adopting a constitutional provision that must prevail. *Williams v. Carr*, 218 Tenn. (22 McCanless) 564, 572, 404 S.W.2d 522, 526 (1966). This intent is reflected in the words of the constitution itself, *Hatcher v. Bell*, 521 S.W.2d 799, 803 (Tenn. 1974), rather than in subjective notions of unexpressed constitutional intent. *Luehrman v. Taxing Dist.*, 70 Tenn. (2 Lea) 425, 438 (1879). It will be presumed that the language has been employed with sufficient precision to

¹ Article II, § 20, provides, in pertinent part: “No law of a general nature shall take effect until forty days after its passage unless the same or the caption thereof shall state that the public welfare requires that it should take effect sooner.” This office has opined that, under this provision, when a bill becomes a law after the effective date specified in the bill, the effective date of the act is forty days after the bill becomes law. See Op. Tenn. Att’y Gen. 98-085 (Apr. 14, 1998) and Op. Tenn. Att’y Gen. U88-66 (June 16, 1988).

convey such intent; and where such presumption prevails, nothing remains except to enforce that intent. *Shelby County v. Hale*, 200 Tenn. (4 McCanless) 503, 510, 292 S.W.2d 745, 748 (1956). Thus, a constitutional provision will be taken literally unless its language is of doubtful import. *Id.*, 200 Tenn. at 511, 292 S.W.2d at 749.

The pertinent language of Article II, § 20—“No law of a general nature shall take effect until forty days after its passage”—is plain and unambiguous. The section does not contain any provision extending the forty-day period if the fortieth day is a Saturday, Sunday, or legal holiday. No other provision of the constitution provides for any such extension of the time period, and this office is not aware of any judicial decision or law² permitting or requiring such an extension. Therefore, it is the opinion of this office that, in accordance with the intent expressed in the language of the constitution, if the prescribed forty-day period ends on a Saturday, Sunday, or legal holiday, the act takes effect on that day.

While the text of Article II, § 20, alone is determinative of the question, the conclusion is supported by the texts of other provisions of the constitution. For example, Article XI, § 9, relating to power over local affairs, home rule for cities and counties, and consolidation of functions, provides that, with respect to any proposal of a charter or amendment, “[i]t shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.” No provision is made for the extension of the sixty-day time periods beyond a Saturday, Sunday, or legal holiday. However, Article III, § 18, relating in part to bills becoming law without the governor’s signature, provides in pertinent part that, “[i]f the Governor shall fail to return any bill with his objections in writing within ten calendar days (Sundays excepted) after it shall have been presented to him, the same shall become a law without his signature.” Thus, it is clear that, when the constitutional framers intended to exempt a particular day from the time calculation, they knew how to do so and did so. From the fact that no such exemption for Saturdays, Sundays, or legal holidays is contained in Article II, § 20, it may be inferred that no such exemption was intended. *Cf. State v. Lewis*, 958 S.W.2d 736, 739 (Tenn. 1997) (stating that when one statute contains a given provision, the omission of the same provision from a similar statute is significant to show that a different intention existed).

² The general “computation of time” statute, Tenn. Code Ann. § 1-3-102 (2003), which provides that “[t]he time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or a legal holiday, and then it shall be excluded,” has no application to Article II, § 20. First, applying this statute to Article II, § 20, in effect would permit the General Assembly to amend the constitution by simple legislation, contrary to Article XI, § 3, which prescribes the only methods by which the constitution may be amended. Second, § 1-3-102 was clearly intended to apply in calculating a deadline, e.g., when a claim must be filed or an act performed. Such a reading of the statute is consistent with the objectives of a rule extending a deadline that falls on a non-business day, because it would be impractical to impose obligations that cannot be performed on days when businesses or courts are closed. The effective date of an act does not impose any such requirement. *See People v. Assi*, 877 N.Y.S.2d 231, 235 (N.Y. App. Div. 2009) (holding similar New York “time computation” statute inapplicable to effective date of act and observing that the statute is “a legislative response to legitimate practical concerns bearing on the deadline by which an affirmative act must be accomplished”).

Furthermore, one of the purposes of the effective date of an act is simply to give notice of a new statute. That purpose is fully served through Article II, § 20, if the fortieth day is calculated without regard to the day of the week on which it falls. *See People v. Assi, supra*, 877 N.Y.S.2d at 235 (rejecting argument that act creating new criminal offense could not take effect on Sunday and stating that “[t]here is simply no functional reason not to enforce a provision specifying conduct as criminal on a Sunday”).

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

GORDON W. SMITH
Associate Solicitor General

Requested by:

Ms. Elizabeth A. Sykes
Director, Administrative Office of the Courts
Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219