
When Should a Bill Become Effective? - A Problem for the Constitutional Convention

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social benefit. It does not appeal to those people in the lower income groups, for it is not a type which generates a substantial profit to the winner. Nor does it encourage participants to expend large sums of money upon a mere chance of receiving something which may or may not be of greater value than the sum which they have invested, for the overwhelming motivation of the participant is to contribute to charity, although the chance to win a prize is concedingly an influencing factor. When considering the good generated by the money raised, it can be seen that it far outweighs the moral or ethical wrong, if there be any. Furthermore, as evidenced by the lack of police enforcement against such lotteries, public policy is strongly in favor of this type of lottery. There is no reason why this public policy should not be manifested in the law.

The Illinois lottery provision might well be rewritten so as to be self-executing, thereby eliminating the necessity of relying upon future legislatures to implement it. It should contain a definition of consideration which would apply to and encompass all schemes for promoting business, including those which have escaped a lottery classification through their "free" distribution device. Finally, the Illinois provision should exclude the charitable lottery, and provide for the enactment of a supplemental licensing law which would set forth the types of lotteries and games allowed, the qualifications necessary, and whatever other rules are deemed appropriate by the legislature.

Michael Friedlander

WHEN SHOULD A BILL BECOME EFFECTIVE? A PROBLEM FOR THE CONSTITUTIONAL CONVENTION

An aspect of the Illinois Constitution which the delegates to the proposed Constitutional Convention should seriously consider revising is the provision regulating the effective date of bills passed by the General Assembly.¹ This section provides that all laws shall become effective on the first day of July following their enactment. Since the legislature usually remains in session until close to the first of July, the result of this section is that many laws passed near the end of the session take effect almost immediately, and little time, if any, is available for publication of their texts.

Inherent in the concept of a rule of law, rather than a rule of men, is the principle that people have a right to know the content of the laws which govern them. In order to observe this right, it is necessary that all laws be published before they become effective, so that people can order their conduct accord-

¹ ILL. CONST. art. IV, § 13.

ingly. The present provision of the Illinois Constitution does not take into consideration the time necessary for publication of a law after its passage, resulting in some laws being effective for some time before they are brought to the attention of the public. Since ignorance of the law is generally no excuse for its violation, the rights of persons subject to these laws may well be prejudiced. In order to prevent such a result, this provision should be amended so as to guarantee that a uniform amount of time will be available for the publication and dissemination of the texts of all new laws before their effective dates.

The principle that the people subject to the laws of a sovereign state have the right to know the content and legal import of those laws is deeply rooted in the Anglo-Saxon legal tradition. Philosophers, such as Thomas Aquinas² and Suarez,³ have stated that a law must be promulgated in order to have any force and effect. This idea was recognized in England as part of the common-law system. In commenting on the subject, Blackstone said that law is "a rule prescribed. . . . It is requisite that this resolution be notified to the people who are to obey it. . . . All laws should be therefore made to commence in futuro, and be notified before their commencement."⁴ The United States adopted this concept as part of its legal system with the resounding approval of American commentators. William Clark, in his work *The Soul of the Law*, writes that, since ignorance of the law is not an excuse, "reason demands that laws be promulgated, that the individual be put in the way of knowledge of the law. . . . If the individual cannot be expected of himself to know them, he may claim the right to be sufficiently informed of them by publication."⁵ Dean Pound, in *An Introduction to the Philosophy of Law*,⁶ also recognized the right of men to know the content of the laws by which they are governed, and their consequent right to demand that they be published.

It is not sufficient that a law be published after it takes effect, since this would result in a man being bound, at least until publication, by a law whose provisions he does not know. If he is to conform his conduct according to its mandate, it is necessary that he know the law's provisions before it becomes effective. But, although the necessity of publication has been recognized by legal scholars and jurists, the United States Supreme Court has refused to assent to the proposition that lack of publication is sufficient to invalidate a law. In *Arnold v. U.S.*, the Court rejected the argument of counsel for the plaintiff in error that "To enforce any positive rule as a law, before the

² THOMAS AQUINAS, *SUMMA THEOLOGIA* I-II, q. 90, art. 4.

³ FRANCISCO SUAREZ, *DE LEGIBUS*, BOOK II, ch. 1, § 1.

⁴ BLACKSTONE, *COMMENTARIES* 45-46 (3rd ed. 1768).

⁵ W. F. CLARKE, *THE SOUL OF THE LAW* 63-65 (1942).

⁶ R. POUND, *AN INTRODUCTION TO THE PHILOSOPHY OF LAW* 21 (1922).

individual could be presumed to know it, would be alike inconsistent with public justice and civil rights.⁷ In *Lapeyre v. U.S.*,⁸ the Court, although admitting that publication was desirable, held that a presidential proclamation or a statute was effective without publication because of the practical difficulties of proving the fact of publication at some later date, and the resulting possibilities of "indefinitely recurring litigation." The strong dissent of Justice Hunt, in which Justices Miller, Field and Bradley joined, upheld the necessity of publication, stating that "it is assumed generally, as resting on . . . the general principles of law, that there must be a publication, and nowhere is an intimation to the contrary to be found."⁹ In rejecting the argument of the majority, Justice Hunt said that "the argument of inconvenience is never a satisfactory one. . . . The important rights of persons and of property affected by [a statute or proclamation] cannot be allowed to be overborne by the argument of inconvenience."¹⁰

This right of a citizen to know the content of a law before he becomes subject to its command is thwarted by Article IV, section 13 of the 1870 constitution. As indicated above, this section provides that "no act of the general assembly shall take effect, until the first day of July next after its passage, unless, in case of emergency . . . the general assembly shall, by a two-thirds vote of all the members elected to each House, otherwise direct."¹¹ The provision was inserted into the constitution of 1870 to insure that sufficient time would be available for publication and dissemination of new laws after the end of the legislative session, and prior to the date they were to become effective, and to insure that all new laws would become effective at a uniform time. The comparable provision of the constitution of 1848, which was superseded in 1870, provided that ". . . no public act of the General Assembly shall take effect or be in force until the expiration of sixty days from the end of the session . . ." ¹² Since the effective date of new laws was determined under this section by reference to the date of adjournment of the session, the length of the session was immaterial, and at least two months were available after each session for publication. The constitutional convention of 1869 proposed that this section be amended, however, because it was felt that it would be desirable to have a definite date of effectuation, not varying according to the date the legislature adjourned.¹³ Since the constitution of 1848, as well as

⁷ 13 U.S. (9 Cranch) 103, 117 (1815).

⁸ 84 U.S. (17 Wall.) 191 (1872).

⁹ *Id.* at 202.

¹⁰ *Id.* at 204.

¹¹ ILL. CONST. art. IV, § 13.

¹² ILL. CONST. art. III, § 23 (1848).

¹³ 1 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLINOIS 540 (1870).

the proposed revision, contained a provision setting the opening date of each biennial session early in January,¹⁴ and since at that time the legislature was seldom in session for more than three months,¹⁵ the adoption of July 1 as the effective date of new laws provided from 60 to 90 days for publication after the end of the session. However, the decision to adopt a definite date was an unfortunate one; the convention delegates of 1869 did not foresee the result arising from this provision almost one hundred years later. The period of time available for publication of new laws has grown shorter as legislative sessions have grown longer, and although great advances have been made in the science of communication,¹⁶ it is possible today that a law may be in full force and effect in Illinois for several months before it is brought to the attention of the public.¹⁷ Thus, the effect of Article IV, section 13 today is precisely the opposite of that intended. There are several reasons for the existence of this undesirable situation, most of which are directly traceable to the archaic and outmoded constitution of 1870.

The constantly increasing complexities of modern society, and therefore of government, demand that the legislature recognize, deal with, and legislate with reference to a multitude of problems which did not exist in 1870. The requirement of biennial sessions of the legislature, although sufficient to deal with the problems of 1870, is completely unrealistic today. The legislature of the nineteenth century could meet once every two years, handle all necessary business, and adjourn in three months, allowing sufficient time for the issuance and publication of the texts of new laws. The problems of today, however, are such that the legislature is unable to do its job in three months. The constitution of 1870, although providing that the legislative session open on a

¹⁴ "The sessions of the general assembly shall commence at 12 o'clock noon, on the Wednesday next after the first Monday in January, in the year next ensuing the election of members thereof. . . ." ILL. CONST. art. IV, § 9.

¹⁵ *Supra* note 13.

¹⁶ A recent experiment in Illinois shows promise of solving to a great extent the problem of communicating the content of new laws to the general public. On October 7, 1967, the Illinois State Bar Association, in conjunction with WGN television, presented an hour-long documentary entitled "The New Laws," which dealt with those laws of a general nature which were passed by the 75th General Assembly in 1967. The program consisted of a panel of ISBA members, moderated by John Drury, WGN's top news analyst, and covered subjects of interest to the public in the areas of motor vehicle laws, credit reform, family law, probate and real estate, and criminal law. The program was subsequently re-broadcast on 11 television and 52 radio stations throughout the state of Illinois; it reached an estimated audience of 3.5 million people. Thanks to the generosity of the participating stations, the cost to the ISBA was held to a minimum, and the value of such a program as a public service cannot be calculated. Such a presentation should definitely be repeated in the future. For more information see Martin, *How Millions Learned About the New Laws on Radio and Television*, 56 ILL. BAR J. 372 (1968).

¹⁷ LEGISLATIVE REFERENCE BUREAU, CONSTITUTIONAL CONVENTION BULLETINS 559 (1920).

particular date,¹⁸ and that new laws are to be effective on a particular date,¹⁹ provides no set date for adjournment.²⁰ The legislature of the twentieth century, shackled by the requirement of biennial sessions, and by an ever-increasing number of proposed bills,²¹ is forced to remain in session for longer periods of time, and today, as a matter of course, does not adjourn until late in June.²²

It is an indisputable, if perhaps regrettable, fact that the legislature seldom settles down to the serious business of action upon proposed legislation until the waning days of the session.²³ The majority of bills passed receive their approval in the latter part of the session, and, although there is sufficient time for the printing and publication of the texts of those bills passed in the early part of the session before their effective date, the arbitrary limitation of July 1 as the effective date results in a shorter period of time being available for publication of those bills passed as the session draws near to adjournment, thus defeating the basic purpose of section 13.

A bill which is passed by the legislature and is presented to the governor becomes a law as soon as it is signed by the governor,²⁴ or ten days after presentation if the governor neither signs it nor returns it with his objections;²⁵ but it does not become effective until July 1.²⁶ Thus, if a bill is passed early in the session, and is signed into law soon thereafter (March, for example), at least three months are available for printing and publication of its text. This would certainly seem to be sufficient time. However, if a bill is passed by the general assembly late in the session, but before July 1, and is approved by the governor after that date, it becomes a law and is effective immediately upon the governor's approval.²⁷ Since the Constitution provides that the governor has ten days in which to consider any bill presented to him,²⁸ and

¹⁸ ILL. CONST. art. IV, § 9.

¹⁹ ILL. CONST. art. IV, § 13.

²⁰ Cf. ILL. CONST. art. IV, § 10; art. V, § 9.

²¹ The 75th General Assembly presented a record 4,268 bills for consideration, of which 2,572 were passed. ILL. STATE BAR ASS'N., LEGISLATIVE CHECKLIST (July, 1967).

²² The 75th General Assembly adjourned *sine die* on July 1, 1967. *Id.*

²³ Of the record 4,268 bills presented to the 75th General Assembly, 23% were acted upon during the last week of the session. *Supra* note 21.

²⁴ ILL. CONST. art. V, § 16; *Smith v. Thomas*, 317 Ill. 150, 147 N.E. 788 (1925).

²⁵ ILL. CONST. art. V, § 16.

²⁶ ILL. CONST. art. IV, § 13; *Board of Educ. v. Morgan*, 316 Ill. 143, 147 N.E. 34 (1925).

²⁷ *People v. Kramer*, 328 Ill. 512, 160 N.E. 60 (1928); *Hish v. Shelby County*, 317 Ill. App. 540, 47 N.E.2d 107 (1943); *Weil-McLain Co. v. Collins*, 395 Ill. 503, 71 N.E.2d 91 (1947); *Board of Educ. v. Morgan*, *supra* note 26.

²⁸ ILL. CONST. art. V, § 16.

an additional ten days if the legislature adjourns before his return is due,²⁹ it is entirely possible, and often happens, that a bill passed late in the session can be approved by the governor after July 1, and thus take effect immediately, without any time whatever being available for publication. And since a majority of those bills passed are approved in the latter part of the session, a large proportion of new laws fall into this category.

If, on the other hand, a bill passed early in the session is vetoed by the governor rather than approved, it can be passed into law over the governor's veto by a two-thirds majority vote of both houses,³⁰ and, if such is done, the effective date under section 13 will still be far enough in the future to allow sufficient time for publication. As the date of adjournment draws nearer, however, the governor's veto power takes on much more significance in terms of publication time. Even if a bill passed late in the session and then vetoed by the governor can subsequently muster sufficient support for passage, little if any time will remain before it becomes effective, and the problem of publication arises once more.

Since all legislation must be submitted to the governor for approval or veto before it can become law,³¹ and since the word "passage" contained in section 13 has been interpreted by the Illinois Supreme Court to mean passage by the legislature rather than approval by the governor,³² it would seem that an amendment to section 13 should recognize the existence of the veto power, and should consider its effect in determining the effective date of legislation. Such effective date should be determined, not by a specific date,³³ and not by the date of adjournment of the legislative session as is done in some states,³⁴ but by a method which considers the date of passage as well as the method of passage, and which guarantees that a uniform amount of time will be available for the publication of all new laws. While this would mean that new laws would not all become effective on the same date, this would seem to be a minor obstacle, and an exception might well be made in the case of appropriation bills.

Several states have provisions which are quite similar to that contained in the constitution of 1848. New York provides every law shall take effect "on the twentieth day after it shall have become a law."³⁵ Washington, Michigan, California, Arizona and Kentucky all provide for an effective date ninety

²⁹ ILL. CONST. art. V, § 16.

³⁰ ILL. CONST. art. V, § 16.

³¹ ILL. CONST. art. V, § 16.

³² *People v. Kramer*, *supra* note 27; *Board of Educ. v. Morgan*, *supra* note 26.

³³ ILL. CONST. art. IV, § 13.

³⁴ *See* WASH. CONST. art. II, § 41; MICH. CONST. art. IV, § 27.

³⁵ N.Y. LEGIS. LAW § 43 (McKinney 1952).

days after the adjournment of the legislative session.³⁶ Tennessee shortens the period to forty days after its passage.³⁷ Kansas and Wisconsin, recognizing the importance of publication, make the effective date dependent upon publication rather than upon a fixed period of time. Wisconsin provides that "no general law shall be in force until published";³⁸ this has been interpreted to mean the day after publication.³⁹ Kansas, although making the effective date depend upon publication, leaves the determination of the exact date up to the legislature. The Kansas Constitution provides that "the legislature shall prescribe the time when its acts shall be in force, and shall provide for the speedy publication of the same; and no law of a general nature shall be in force until the same be published."⁴⁰ Although several other states have provisions similar⁴¹ to section 13 of the Illinois Constitution, the mere fact that Illinois is not the only state with this problem is no reason not to remedy the situation.

As has been shown, the present constitutional provision, rather than serving the purpose for which it was intended,⁴² results in a wide latitude in the time available for dissemination of the content and effect of new laws. This disparity can easily result in prejudice to or destruction of substantial rights of persons subject to the laws of Illinois;⁴³ such a result should not be tolerated. An amendment to section 13 calculated to overcome this disadvantage might be cast in the following form:

No act of the general assembly shall take effect until ninety days⁴⁴ have elapsed after its passage by both houses and approval by the governor: Or, if the governor fail to return it within ten days, then one hundred days after submission to the governor. Or, if it is returned by the governor with objections, and subsequently receives a two-thirds majority vote of both houses, then ninety days after it receives such vote. Such time shall be computed without regard to the date of adjournment.

Such an amendment would seem to guarantee that all laws would receive the same publication time. It would do away with the entirely artificial require-

³⁶ WASH. CONST. art. II, § 41; MICH. CONST. art. IV, § 27; CAL. CONST. art. IV, § 1; ARIZ. CONST. art. IV, pt. 1, § 1; KY. CONST. § 55.

³⁷ TENN. CONST. art. 2, § 20.

³⁸ WIS. CONST. art. 7, § 21.

³⁹ 4 OP. ATT'Y. GEN. 656 (1915); 10 OP. ATT'Y. GEN. 1099 (1921).

⁴⁰ KAN. CONST. art. 2, § 19.

⁴¹ New Jersey, July 4th after passage. N.J. REV. STAT. ANN. § 1:2-3 (1939). Pennsylvania, September 1st after enactment. PA. STAT. tit. 46, § 504 (1952).

⁴² *Supra* note 13.

⁴³ *Lapeyre v. U.S.*, *supra* note 8 (dissenting opinion).

⁴⁴ The ninety day period is merely exemplary; sufficient time should be allotted to insure adequate publication time.

ment that all laws be effective on the same date,⁴⁵ with its consequent result that the public be informed of some laws before their effective date if, by chance, they are passed early in the session, and not informed of others until their rights have possibly been prejudiced because, also by chance, they were passed late in the legislative session.

Such an amendment would also have the effect of spreading out over a longer period of time the job of preparing and printing the texts of new laws, and while it would not relieve to any considerable degree the backlog of new laws which presently occurs near the end of the session, it would make the job of the Secretary of State much easier by guaranteeing sufficient time before the effective date.

The point may be raised that if the Illinois Constitution were to be amended so as to provide for annual rather than biennial sessions, the legislature would be able to adjourn sooner each year, allowing sufficient time for publication prior to July 1, thus obviating the necessity for an amendment to section 13. This point may be well taken if one considers only the immediate future; but such a consideration is too narrow. Just as the delegates of the past were unable to foresee the problems of today, neither is the delegate of today prescient. Adherence to a rigid standard dependent upon a certain date, rather than a flexible standard which can better serve the needs of the future, cannot be justified. A certain uniformity as to time allotted for publication of legislation must be deemed to be essential, and the present section 13 has shown that its provisions are antagonistic to such uniformity.

Bernard Vail

⁴⁵ ILL. CONST. art. IV, § 13.