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May 5, 1992

Honorable Arthur Miller, Jr.
State Senator
The Capitol
Lansing, Michigan

Honorable John D. Cherry
State Senator
The Capitol
Lansing, Michigan

Dear Senators Miller and Cherry:


You have asked whether one house of the Michigan Legislature may request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

The identical question was addressed by my office in Letter Opinion of 'the Attorney General' to Senator Patrick H. McCollough, dated December 6, 1977, copy enclosed, which concluded, at p 4:

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

It remains my opinion that one house of the Michigan Legislature may not request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the Legislature.

Very truly yours,


FRANK J. KELLEY
Attorney General

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Honorable Patrick H. McCollough
State Senate
The Capitol
Lansing, Michigan

Dear Senator McCollough:

House Bill No. 4368, which affects the single business tax, was enrolled on October 20, 1977 and presented to the Governor for signature on October 21, 1977. On November 3, 1977 the House requested that the bill be returned to it. This request was granted by the Governor, who returned the bill to the House (without a veto message), where the enrollment was vacated. The Senate did not participate in the request for the return of the bill.

You have therefore requested my opinion on the following questions:

- "1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?
- "2. Can the Governor return an enrolled bill to the house of origin without a veto message?
- "3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?
- "4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run,

notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the Legislature without authority under the rules?"

Your questions will be addressed seriatim; however, before addressing them, it will be helpful to discuss the general principles involved.

Const 1963, art 4, § 33 provides:

"Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house passed the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it."

Prior to the adoption of the current Michigan constitution, the State Supreme Court considered a related question in Anderson v Atwood, 273 Mich 316; 262 NW 922 (1935). In Anderson, however, the court had under consideration the effectiveness of a bill which had been returned by the governor to the legislature upon a concurrent request of both houses for the return thereof.

Although the court did not deal with the problem of recall of a bill by only one of the legislative bodies which you have presented, its language is instructive. Furthermore, since this case involved an interpretation of a section in the 1908 constitution which contained a similar provision, the constitutional delegates may be presumed to have been aware of the holding of the court. The court in Anderson, supra, stated, inter alia:

"There is no finality in legislative enactments, enrolled and sent to the governor and, by courtesy, returned by him within ten days and before action thereon, at the request of the legislature by joint resolution of concurrent action. * * *

"The enactment, as sent to the governor, lost its identity and force by the courtesy return thereof to the legislature and, without new legislation with reference thereto, did not become a valid enactment by operation of law.

"House Bill No. 145 is not an act by operation of Constitution 1908, art. 5, § 36."
Anderson v Wood, supra, p 319, 323.

Several facts are apparent from the Supreme Court statements in Anderson. First, the Supreme Court recognized that it is a courtesy for the governor to return a bill to the legislature upon its request once that bill has been enrolled. Second, while the court was concerned with a factual situation in which a concurrent resolution seeking return of the bill had been passed, it nevertheless was explicit in its statements that the request from the legislature must be a joint or concurrent action of both houses. That joint action is necessary and is strongly re-enforced by other authorities on statutes and constitutional law such as 1 Sutherland Statutory Construction (4 ed) § 16.07, Recall of Bills from the Governor:

"A few cases have raised the questions as to the effect of the return of an act by the governor to the legislature at its request before the time has expired in which the governor may approve the bill. Where the request and return is made with the concurrence of the other house the return is valid and a new presentment to the executive is necessary before the bill may become law. One house alone, however, has no authority to act without the consent of the other and a return at the

request of one house alone may cause a bill to become law because of the executive's failure either to approve or veto."
(Footnotes omitted.)

Also, 82 CJS, Statutes, § 48b, Recall:

"In the absence of constitutional restriction the legislature may by concurrent resolution recall a bill after presentation to the governor; but a bill may not be recalled on request of one house acting alone so as to render it open to reconsideration by the legislature."

Based on the foregoing text authorities and the Michigan Supreme Court's decision in Anderson, it is my opinion that if this matter were presented to the court, it would answer your questions as follows:

"1. Can one house of the Michigan Legislature request the return of an enrolled bill which has been presented to the Governor without the concurrence of the other house of the legislature?"

The request by the legislature to return an enrolled bill once it has been presented to the Governor for signature must be a joint or concurrent action of both houses; a request for return of the bill by either house independently of the other is ineffective. Even if the governor returns a bill upon the request of a single house, that house is not able to vacate the action of enrollment.

"2. Can the Governor return an enrolled bill to the house of origin without a veto message?"

In my opinion, the governor may, upon receipt of a proper request by both houses, return an enrolled bill to the house of origin without a veto message. This action must occur prior to the expiration of the 14-day period prescribed by section 33 of Const 1963, art 4.

"3. If the answer to question No. 1 is 'no' then what is the effect of the action in question No. 1 being taken on the status of the enrolled bill pursuant to Art. 4, § 33 of the Michigan Constitution?"

The return of Enrolled House Bill No. 4368 by the Governor to the House of Representatives upon a unilateral request of that house without the concurrence of the Senate is of no effect and the bill becomes law without his signature.

Sen. Patrick H. McCollough

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"4. Has House Bill 4368 become law without the Governor's signature by virtue of the fact that the Governor has not vetoed it and the statutory period for doing so has run, notwithstanding the fact, and/or because of the fact, that the Governor returned the bill to the legislature without authority under the rules?"

As noted in my answer to your third question, it is my conclusion that the fact that the veto period of Const 1963, art 4, § 33 has expired and the session of the legislature at which the bill was passed continues, the bill has, by operation of law, become a law, irrespective of the actions of the Governor and the House of Representatives upon that bill.

Very truly yours,

FRANK J. KELLEY
Attorney General