

## Opinion No. 15-1472

March 11, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Modesto C. Ortiz, Chairman, Special Committee of the House of Representatives, Santa Fe, New Mexico.

**As to when the session of the legislature of 1915, under the Constitution, expires.**

### OPINION

{\*56} As I understood at noon today from you and your committee orally, my opinion is desired as to the time when the present session of the legislature, under the Constitution, expires. In the very brief time given to me, I have not been able to examine all possible authorities on this question, but I have seen enough to satisfy me, and it would probably not be of any value for me to encumber this letter with numerous citations of authorities.

The constitutional provisions to be considered are to be found in Sections 5 and 14 of Article IV of the Constitution. Section 5 is as follows:

"The first session of the legislature shall begin at twelve o'clock, noon, on the day specified in the proclamation of the governor. Subsequent sessions shall begin at twelve o'clock, noon, on the second Tuesday of January next after each general election. No regular session shall exceed sixty days, except the first, which may be ninety days, and no special session shall exceed thirty days."

Section 14 is as follows:

"Neither house shall, without the consent of the other, adjourn for more than three days, Sundays excepted; nor to any other place than that where the two houses are sitting; and on the day of the final adjournment they shall adjourn at twelve o'clock, noon."

What you desire to know, evidently, is the meaning of the phrase "No regular session shall exceed sixty days," but in the view that I take of the subject, that must be considered in connection with the language of Section 14 which requires the legislature to adjourn at twelve o'clock noon on the day of the final adjournment.

As a general rule, a day is held to be the space of time between one midnight and the next midnight. This is well established. {\*57} It is equally well established that generally the law takes no note of fractions of days. This session of the legislature began on January 12, 1915, at noon, and in my opinion, January 12 was the first day of this session of the legislature and the second day began at midnight and continued until

midnight of January 13. Beginning the count in this way, brings us to the sixtieth day tomorrow, Friday, March 12, and that day must be the day of final adjournment at noon.

I am satisfied that there are but few authorities not in harmony with this view. One is in Wyoming, where the court expressed a different view, but that expression was entirely unnecessary to any decision of the case and is what is known as **obiter dictum**.

(White vs. Hinton, 17 L.R.A. 66.)

In a case in Alabama, the court held that the days mentioned in the constitution were actual working days when the legislature was in session, but this was put entirely upon the ground that such had been the legislative construction for many years and not upon any general reasoning.

(Moog vs. Randolph, 77 Ala. 597, 607-8.)

This doctrine was followed in another later case in the same state.

(Ex parte Cowert, 92 Ala. 94.)

In Arizona, the supreme court of the territory followed the Alabama cases, at the same time asserting that the legislative construction in Arizona had been the same as in Alabama.

(Cheyney vs. Smith, 23 Pac. 680.)

This case, however, was expressly overruled in a later Arizona case.

(Maricopa vs. Osborn, 40 Pac. 313.)

I believe these are the only cases which can be found not in harmony with my opinion above expressed, while there are many which might be cited to support my view. If there is anything in the idea that the court should be controlled by legislative construction of what is meant by the constitution, as the court held in the Alabama cases and in the earlier Arizona case, we would find in New Mexico ample precedent in legislative action to sustain the view which I have expressed, both under the territorial government as well as under the present government. In the original organic act establishing the Territory of New Mexico, it was provided "That no one session shall exceed the term of forty days." In December, 1880, congress declared that "The sessions of the legislative assemblies of the several territories of the United States shall be limited to sixty days duration." Under these provisions, I believe that from the beginning the days were counted, as I believe that they should be, at the present time. I know that even since 1880 they have been so computed. Since the adoption of the Constitution we have had two sessions of the state legislature and, as can readily be seen by reference to the journals of the two houses, the legislature convened at the first session on the day fixed by the Governor, and at the second session, on the second

Tuesday in January, 1913, at twelve o'clock, noon, and that day was counted as the first day of the session. On the eighty-ninth day after that first day of the first {58} session, which the journals show was the ninetieth day, and on the fifty-ninth day after the first day of the second session, which the journals show was the sixtieth day, the legislature adjourned at noon.

I have heard some suggestion recently made that the proper construction of the Constitution would require us to count twenty-four hours from noon on the first day of the session up to noon of the next day and call that one day, and by following this count throughout, our sixty days would not expire until noon on Saturday next, but this will be violative of the general well established rule already referred to, -- that the law will not take note of fractions of days. The first day when this legislature met on January 12, 1915, was, within the meaning of the Constitution, a day, and it expired at midnight next thereafter.

It is true, as has been also suggested, that if the legislature adjourns at noon tomorrow, it would not occupy with its session the full day up to midnight, but we must take the Constitution as a whole and Section 14 of Article IV, hereinbefore quoted, requires the final adjournment to be at twelve o'clock, noon, and therefore, within the meaning of the Constitution, the sixtieth full legislative day must be considered as terminating at the hour required for the adjournment.