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Opinion of the Attorney General As to When the Workmen's Compensation Law Takes Effect

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Judge Richard Livingston Goode, A.M., LL.D., has been appointed Dean Emeritus on his retirement as Dean of the Law Faculty in July of this year. Judge Goode was forced to retire on account of ill-health. He has been Dean since 1915, with the exception of the time he served as Associate Justice of the Supreme Court of Missouri in 1919-21.

Two new members of the Law Faculty this year are Professor C. S. Potts, A.M., LL.B., S.J.D., formerly of the University of Texas and author of Potts' "Cases on Criminal Procedure"; and Professor W. B. Rutledge, A.B., LL.B., formerly of the University of Colorado Law Faculty.

Professor C. S. Potts, who has been appointed the new Faculty Editor of the St. Louis LAW REVIEW, is one of the founders and was the first editor of the Texas Law Review.

Hon. Harry B. Hawes, '96, was elected United States Senator from Missouri to succeed Hon. George H. Williams, '97. Senator Hawes has represented a St. Louis district in Congress since 1921. He is an enthusiastic exponent of good roads for Missouri.

Word has been received in St. Louis of the death of Hon. Adolph Wislizenus, '85, on November 13 of this year in the Philippine Islands, where he was Judge of the Court of First Instance at Cebu, P. I.

Parker Wood, '16, has recently been appointed a Judge of the Municipal Court of Los Angeles, Cal.

The Law School lost a valuable friend in the death on November 21 of Mr. John Fitzgerald Lee, member of the Corporation of Washington University, and a Trustee of the St. Louis Law Review. Mr. Lee was born in Washington, D. C. in 1848. He was educated at Mount St. Mary's College, Georgetown University, and the University of Virginia. In 1870 he came to St. Louis and since has been engaged in the practice of law here.

Mrs. Arthur O'Brien, daughter of the late Henry D. Estabrook, '76, has established a fund for the purchase of books for the Law Library in memory of her father.

The Law Library is also the recipient of gifts from the late Professor Gordon Sherman, '76, and Professor Joseph H. Zumbalen, '87.

OPINION OF THE ATTORNEY GENERAL AS TO WHEN THE WORKMEN'S COMPENSATION LAW TAKES EFFECT*

- (1) When does the Workmen's Compensation Act take effect?
- (2) When does the liability of employers to employees take effect under this act?

(1) The Fifty-third General Assembly passed what is known as the "Workmen's Compensation Act," see Laws of Missouri, 1925, pages 375 to 407. As there was no emergency clause this act could not take

*Here, a letter from North T. Gentry to Alroy S. Phillips of the Workmen's Compensation Commission is reproduced.

effect until ninety days after the adjournment of the General Assembly, as provided by Section 36 of Article IV of our Constitution. As the General Assembly adjourned on April 9, 1925, the act ordinarily would have taken effect on July 9, 1925. By reason of the filing of referendum petitions with the required number of signatures with the Secretary of State, the act did not go into effect at that time, but was submitted to a vote of the people of the State at the November election, 1926. The proposition thus submitted received a majority of the votes cast at said election, as shown by the official returns. While the vote of the people at that election decided the question, the result of that decision was not known officially until the official returns were certified by the Secretary of State to the Governor and a proclamation issued by the Governor on yesterday. "In ordinary usage, an election means the act of casting and receiving the ballots, counting them and making the return." 20 Corpus Juris, p. 55.

I am, therefore, of the opinion that the Workmen's Compensation Act, by reason of its submission under the referendum and by reason of the vote in its favor on November 2, went into effect on November 16, 1926, the day when the returns were certified to the Governor by the Secretary of State and the day when the Governor issued his proclamation. It was therefore proper for the Governor to appoint the members of the Commission on that date, proper for each one to take the oath and give the required bond, and proper that the Commission should organize and do many things in preparation for the work before it.

(2) Ordinarily, an act that has been referred to the people takes effect as soon as it is ratified by the vote of the people and the official returns thereof duly certified. But Section 79 of the Compensation Act is as follows: "Sections 2 to 4, inclusive, and section 34 of this act shall not take effect until September 1, 1925." The date fixed by the act for the taking effect of these four sections was fifty-four days after the taking effect of the major portion of the act, all of which was deemed important and proper by the General Assembly, which had a perfect right to fix such a time. There were reasons for this as the members of the Assembly well knew; employers, many of whom operate extensive plants and employ large numbers of men and women, needed a reasonable time in which to arrange their business in reference to this new law; and insurance companies needed a reasonable time in which to adopt and promulgate rates, etc. Employers and insurance men could not know what would be the result of this election; and if it was right to give them fifty-four days after the taking effect of most of the act when the same was passed by the General Assembly, the same is true when the act was submitted and ratified by a vote of the people. Besides the Compensation Commission will need time to secure suitable offices in Jefferson City, St. Louis and Kansas City, suitable equipment for these offices, competent help, proper blanks and make necessary investigations. It would have been clearer if this act had provided that these four sections should be suspended until fifty-four days after the taking effect of the rest of the act. However, that was clearly the intention of the law-makers, and their intention may be inferred from the

language used in the act itself and the subject matter thereof. This act, as amended, passed the Senate on April 7, 1925, and passed the House on April 6, 1925. On April 8th both the House and the Senate agreed to a final adjournment on April 9th, and both did adjourn on that day. It will be seen that at the time of the passage of this act the members of the General Assembly knew with reasonable certainty when the body of the act would go into effect; so the provision regarding the time when the four sections would become operative was well known to the members of that body. It is reasonable to presume that the act would not have been passed by the General Assembly without the provision regarding said four sections, for the act was amended in both legislative bodies, and it required a conference committee to finally agree on the terms thereof, and it did not pass both bodies till near the end of the session. To disregard the provisions regarding said four sections would be clearly in violation of the act.

The members of the General Assembly well knew that this act could be suspended under the initiative and referendum, as similar acts passed by former assemblies were suspended and were rejected by the people. We must therefore presume that the members of the General Assembly intended to give employers, insurance companies and the Commissioners the fifty-four days after most of the act went into effect before sections 2 to 4, inclusive, and section 34 should become effective. And the people of the State, in voting on this proposition at the November election, knew that this legislative act provided that these four sections should not take effect until fifty-four days after the ratification of the act; and it must also be presumed that they knew the reasons therefor, to all of which the people signified their approval at the November election. I am, therefore, of the opinion that said four sections, which refer to the liability of employers to employes, do not take effect until fifty-four days after November 16, 1926, and the Commission is not justified in attempting to assume jurisdiction in the settlement of claims by employes against employers till then.

In support of my opinion I respectfully refer you to the following:

State ex rel v. Pond, 93 Mo. l. c. 624-6.

Salem Hospital v. Olcott, 67 Oregon 448, 136 Pac. 341.

Whittaker v. Mutual Life Ins. Co., 133 Mo. App. 664.

State ex rel v. Edwards, 136 Mo. l. c. 567-8.

NORTH T. GENTRY,
Attorney-General.

ENFORCEMENT OF A MONEY JUDGMENT AGAINST A STATE

The problem of the exact extent of the powers which may be exercised by the government of the United States without encroaching upon the rights of the constituent states, far from being settled by past judicial decisions, is still a subject of heated debate in some quarters, and will probably remain an open question for many years to come. One interesting phase of this general problem is the extent of the power of the