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APRIL 09 1997

OPINION NUMBER 95-110(A)

Ms. Gail Avery
Justice of the Peace, Ward 3
Mooringsport District -
9250 N. La. Hwy. 169
Mooringsport, LA 71060

62-Leases
La. C.C.P. Article 10
La. C.C.P. Article 4701

The five day period of C.C.P. Article 4701 is calculated in legal or business days rather than in calendar days since this period is less than a period of seven days.

Dear Ms. Avery:

You have requested a clarification and reconsideration of Opinion 95-110 and the corresponding syllabus.

This opinion 95-110(A) amends the syllabus to correspond with the opinion. The original opinion is unchanged and is attached for your convenience.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

By: J. Richard Williams
J. RICHARD WILLIAMS
Assistant Attorney General

RPI:JRW:glb
Attachment

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MAY 01 1995

OPINION NUMBER 95-110

Honorable Vernon J. Wilty, III
Justice of the Peace
Jefferson Parish Courthouse, Room 806
Gretna, Louisiana 70053

Dear Judge Wilty:

You have requested the opinion of this office regarding the proper construction of Louisiana Code of Civil Procedure Article 4701. The question presented in your request is whether the period required by Article 4701 is five calendar days or five legal days.

Article 4701 states in pertinent part:

> When a lessee's right of occupancy has ceased because of the termination of the lease by expiration of its term, action by the lessor, nonpayment of rent, or for any other reason, and the lessor wishes to obtain possession of the premises, the lessor or his agent shall cause written notice to vacate the premises to be delivered to the lessee. The notice shall allow the lessee not less than five days from the date of its delivery to vacate the leased premises. (Emphasis added)
>
> If the lease has no definite term, the notice required by law for its termination shall be considered as a notice to vacate under this Article. If the lease has a definite term, notice to vacate may be given not more than thirty days before the expiration of the term.

Article 5059(3) of the Louisiana Code of Civil Procedure states:

> In computing a period of time allowed or prescribed by law or by order of court, the date of the act, event, or default after which the period begins to run is not to be included. The last day of the period

> is to be included, unless it is a legal holiday, in which event the period runs until the end of the next day which is not a legal holiday.
>
> A half-holiday is considered as a legal holiday. A legal holiday is to be included in the computation of a period of time allowed or prescribed, except when:
>
> (3) The period is less than seven days.

Given the provision quoted above, it seems clear that the five-day period of Article 4701 is calculated in legal or business days since it is less than a period of seven days.

I trust this answers your question. If this office can be of any further assistance, please feel free to contact us.

Yours very truly,

RICHARD P. IEYOUB
ATTORNEY GENERAL

BY: _____
ROLAND J. DARTEZ
Assistant Attorney General

RPI/RJD/pb
/rjd/opinions/95-110.rd