

Veto, Power of Governor. Appropriations, Right of Governor to Veto. Items of Appropriation Bill, Right to Veto. Part of Item, Right of Governor to Veto.

The authority of the Governor to veto an item, or part of an item in an appropriation bill considered and discussed.

March 17, 1915.

Hon. S. V. Stewart, Governor,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication concerning the authorities relating to the power of the Governor to express disapproval of an item of a Bill making appropriations of money. The provisions of our state constitution relating to the veto power of the Governor, are contained in Sections 12 and 13, Article VII thereof. In Section 12, it is provided that all Bills before they become laws shall be presented to the Governor; if not returned by him to the House in which it originated, within five days, Sundays excepted, it shall be a law unless its return is prevented by adjournment, in which case it shall not become a law without the approval of the Governor within fifteen days after such adjournment. In Section 13 it is provided:

"The Governor shall have power to disapprove of any item or items of any Bill making appropriations of money embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void."

Unless passed over his veto in the manner provided in the Constitution.

Whether the exercise of the veto power is legislative or executive in character is immaterial, for it is a power vested in him, and a duty imposed upon him by the positive mandates of the constitution, and not any Bill can become a law without first being presented to him for his consideration; and not any Bill can become a law after adjournment without his approval thereof. No other department of the State Government or official as such, has any right to call in question the wisdom of any law, but the Governor, by virtue of the authority vested in him has the right prior to the approval or disapproval of any proposed law, to investigate its wisdom, and its effect. Aside from appropriation Bills, no power is vested in the Governor by the Constitution to veto a part of the Bill, and his attempt so to do would as a matter of law, be a veto of the entire Bill.

Regents of University v. Trapp, (Okla.) 113 Pac. 910.

But with reference to appropriation Bills, consisting of different items or parts, the executive veto may properly reach any single item. "Item" is a word of varied meaning, and may relate to circumstances, part, particular of an account, or anything which may form a part of the whole,—an entry or a thing in the whole, composed of several single things. Or, it may mean new and distinct matter, or separate or independent parts of an aggregation.

23 Cyc 371.

In our research we have been able to discover but very few adjudicated cases dealing with this subject. We also find that in some of the States, it is provided in the Constitution that a Bill submitted to the Governor, which he is prevented from returning by reason of adjournment, becomes a law unless objections are filed thereto. While in other states, such as Montana, the Bill does not become a law without his approval. The Constitution of Pennsylvania confers upon the Governor the authority to veto any item of an appropriation Bill, and it is also provided that a Bill submitted to the Governor becomes a law unless he files his objection thereto. The Legislature of that State appropriated in bulk some eleven million dollars for the schools for the period of two years. The Governor approved the appropriation for ten million dollars, and vetoed it as to one million. The Supreme Court in considering the right of the Governor to veto a part of an item, held that it was the constitutional right of the Governor to pass upon the various items of an appropriation Bill, and that the legislature had no authority to so combine separate items, making of them only one item, thereby setting at naught the provision of the Constitution, vesting authority in the Governor to pass upon each item of an appropriation Bill, and that the Governor had the authority to veto a part of the item of eleven million dollars, and his veto thereon was sustained. The court in that case deals specifically with the question presented and holds affirmatively that the Governor is vested with authority to veto part of an item.

Commonwealth vs. Barnett, 199 Pa. St., 161; 48 Atl. 976, 55 L. R. A. 882.

This Pennsylvania case is probably the only court of last resort that has passed directly upon this question, although it has been discussed by courts of other states. The Constitution of Texas, with relation to the veto power of the Governor, is the same as that of Pennsylvania. In that state the legislature made an appropriation in bulk sum of \$83,160 for the Attorney General's department, giving \$41,580 for 1912, and \$41,580 for 1913. The Governor vetoed the bulk sum, and also vetoed the appropriation for one of the years, stating in his veto that he approved the appropriation for the other year. The Supreme Court in considering the matter, after a lengthy discussion as to the right of the Governor to veto a single item, reached the conclusion that the appropriation for each of the years was an item within itself, and that the Governor was within his right when he vetoed the appropriation for one of these years; that his veto of the bulk sum was only to give effect to his veto of the one year appropriation, and that his approval for the other year stood.

Fullmore vs. Lane, 140 Pac. 405.

The Constitution of Wyoming is the same as that of Pennsylvania. In that state, the legislature appropriated \$15,000 for the state geologist. The governor vetoed the appropriation for \$5,000, and approved it for \$10,000. The court after a very lengthy discussion and review of the authorities as to the right of the Governor to veto part of an item, held that the appropriation was effective for the \$10,000 approved, but left it undecided as to the fate of the \$5,000 disapproved.

State vs. Forsyth, 133 Pac. 521.

The constitution of Oklahoma is the same as that in Montana. In that state the legislature appropriated the sum of \$285,810.23 "for the support and maintenance of the State University." Section 2 of the Act contained an itemization as to how this money was to be expended. That is, a certain sum as salary for the President, another sum as salary for professors, etc. The governor approved the Bill for part, but disapproved it as to a part of the several amounts which could be expended for the various purposes, as named in the bill. The Supreme Court held that the appropriation part of the bill was in Section I, and that the statements in Section 2 were only directions as to the expenditure of the money, therefore, were not appropriations, and did not fall within the meaning of the Constitution authorizing the governor to disapprove of a single item, and that his disapproval of a part of these directions was in effect a disapproval of the entire bill, and that the same never became a law.

Regents University vs. Trapp, 113 Pac. 910.

A somewhat similar question was presented to the Supreme Court of the territory of Arizona, but the court there decided that the governor had approved of the entire bill, and that his disapproval of the single item of the appropriation was subsequent to his approval of the bill, and in that the approval he had exhausted his entire power, and his subsequent disapproval was unavailing, and that the entire bill became a law, as having been approved by him.

Porter vs. Hughes, 32 Pac. 165.

If, where an appropriation is made in bulk in one section of the Bill, followed by an itemized statement as to the specific amounts, which may be expended by the different officers and departments, it has the effect of constituting the entire Bill one item, then the Governor would be absolutely deprived of the authority vested in him by the Constitution to express disapproval of any item, except by vetoing the entire appropriation. For example, the legislature might appropriate a certain sum to defray the expenses of the state government for a certain year, and then specify the amount which might be expended by each department or officer, and if those specifications were only directions and not a part of the appropriation, then the Governor would be powerless to veto any part of the bill, but would be compelled to veto the whole bill, thus leaving the State without support, or else to accept it as a whole, although he might disapprove of many of the specifications. This seems to be the doctrine announced in the Wyoming case, *supra*, but with this we are not compelled to give our assent, but believe the better doctrine to be that where an appropriation is made in bulk for different purpose, followed by specifications or direction of the amount which might be expended by each department or officer, that each of such specifications or directions is a separate item which may be the subject of an independent veto.

This doctrine seems to be maintained by the Texas court in the case above cited. If an appropriation in bulk sum were made for defraying the expenses of the State Government, and the same was not in any manner divided among the departments or officers, it is probable that the entire appropriation would be void for ambiguity, unless some power

was granted to some board or officer to make the necessary division between the different departments.

Appropriations are usually made for a certain definite sum, to which is added the qualifying clause "or so much thereof as may be necessary." There is not any obligation resting upon the department to expend the full amount appropriated, for the qualifying words vest a discretionary power in the governing board to determine what amount is necessary; to this we may also add the amount available for the purpose. This is particularly so with reference to the state educational institutions, for there the State Board of Examiners is vested with very large discretion as to the moneys which may be expended by such institutions. Section 110, Chapter 76, Laws 1913.

The language of our Constitution, Section 13, Article VII., is that the governor may express disapproval "of any item or items" of an Appropriation Bill. No express power is there vested to divide an item. The holding of the Supreme Court of Pennsylvania, under similar constitutional provisions is to the effect that the Governor may divide an item by vetoing a part, and approving a part. This is the only court that has passed directly upon the question, and while the argument used by the court in that case is very convincing, still the general discussion contained in the opinions of other courts above referred to appear to be rather contrary to the Pennsylvania decision, although the arguments advanced by the Pennsylvania court have not been answered, and some at least of the grounds on which the other courts base their antagonism to the Pennsylvania doctrine are wholly untenable. The statement made in one of these decisions that the Governor might act arbitrarily or despotic, if this power were granted to him, is to the effect that one department of government possesses far superior virtues to some other department. With the same propriety, the court might have held that it was exceedingly dangerous to lodge with the Supreme Court the power to finally decide a question for fear that department might act tyrannical. The doctrine of superior virtue is not one that seems to rest on any tenable ground. We agree with the statement made in one of the decisions that the "indivisible cannot be divided, but we may also say with equal propriety, that the ununitable cannot be united."

Yours very truly,

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Attorney General.