

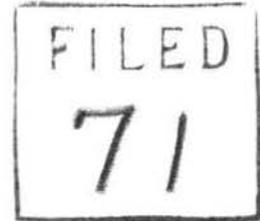
APPROPRIATIONS:
CONSTITUTIONAL LAW:
GOVERNOR:
SCHOOLS:

Appropriation for M. U. Medical and surgical school is valid and Governor's attempted partial veto of bill does not render appropriation unconstitutional .

Opinion No. 71

January 21, 1953

Mr. Elmer L. Pigg
State Comptroller and
Director of the Budget
Department of Revenue
Jefferson City, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"I am enclosing a copy of a letter from Robert L. Jackson, attorney of Kansas City, Missouri, in which he questions the constitutionality of Section 10.860 of House Bill 496, which appropriates \$6,000,000 for the construction of a four year medical school. This letter was addressed to Mr. Morris, Mr. Bates, Mr. Holmes and myself. In conference this afternoon it was agreed by all that we request your official opinion as to the question raised in the letter.

"The officials of the University have filed in my office a requisition to encumber the appropriation in Section 10.860, House Bill No. 496, in the amount of \$62,600.00 for grading, plumbing, excavation and footings to the teaching hospital. Also a requisition for \$2,791.96 for architect fees to be charged against the appropriation..

"Your official opinion is requested as to the constitutionality of the appropriation and whether the account can be legally encumbered and payments made out of it."

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The Sixty-sixth General Assembly enacted appropriation bills for the biennium July 1, 1951 to June 30, 1953. Among these appropriation bills was House Bill No. 496, which contained the item of appropriation in question here. House Bill No. 496 (Laws of Missouri, 1951, page 250) was a general appropriation bill containing one hundred and three sections making appropriations for a large variety of purposes. One of the sections, namely, Section 10.860, Laws of Missouri, 1951, page 250, of this bill appropriated out of the State Treasury, chargeable to the Postwar Reserve Fund, the sum of \$6,000,000.00 for the use of the Board of Curators of the University of Missouri for establishing and maintaining a four-year medical and surgical school. The said Section 10.860, as passed by both houses of the Legislature, reads as follows:

"Section 10.860. Board of Curators, Missouri University--for the purpose of establishing and maintaining a four-year medical school. There is hereby appropriated out of the State Treasury, chargeable to the Postwar Reserve Fund, the sum of Six Million Dollars (\$6,000, 000.00) for the use of the Board of Curators of the University of Missouri for the purpose of establishing and maintaining a four year medical and surgical school, including the purchase or acquisition of necessary land, the construction or acquisition of necessary buildings, the purchase of necessary equipment, and for the cost of operating such school, including the compensation of necessary instructors and personnel for the period beginning July 1, 1951 and ending June 30, 1953."

The Governor endorsed his approval of this general appropriation bill on May 29, 1952, after the sine die adjournment of the Sixty-sixth General Assembly on April 30, 1952.

The Governor's approval of House Bill No. 496 reads as follows:

"Approved this 29th day of May, 1952, as to all items except as to those items and portions of items vetoed and disallowed

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as set forth in my message dated May 29, 1952, hereto attached and made a part hereof.

Forrest Smith
Governor."

In approving House Bill No. 496 the Governor vetoed and disapproved several items of the bill in their entirety. With respect to Section 10.860, the Governor in approving said section undertook to exclude and disapprove the words "including the purchase or acquisition of necessary land."

The partial disapproval of said section was contained in a message filed with the Secretary of State under date of May 29, 1952, and which, in part, reads:

"My belief in the principle of establishing a medical school forbids me from raising a hand even against this beclouded effort of the General Assembly. It is apparent to me, however, that the dilemma is further accentuated by the fact that the meager amount appropriated in this section not only calls for the erection, equipping and maintenance of the medical and surgical school, but it authorizes the purchase and acquisition by the Curators of additional real estate. With the Sixty-Seventh General Assembly scheduled to convene only seven months hence, which could well consider the expediency of further extensive real estate purchases, I do not believe it to be wise or feasible to spend any part of this small appropriation for land. The appropriation can better be spent in establishing the school itself. Consequently, I am approving, in this section, the \$6,000,000.00 made to the Curators of the University of Missouri for the purpose of establishing and maintaining a four-year medical and surgical school but I am excluding, striking out, and disapproving from this section, in lines six (6) and seven (7), the following words, 'including the purchase or acquisition of necessary land,'."

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The validity of the Governor's action in disapproving the words "including the purchase or acquisition of necessary land" and the validity of the appropriation provided by Section 10.860 have been questioned.

You state that the officials of the University have filed in your office a requisition to encumber the appropriation in question in the amount of \$62,600.00 for grading, plumbing, excavation and footings contracted for in connection with the construction of the teaching hospital. Also, a requisition for \$2,791.96 for architect fees to be charged against the appropriation. Because of the questions which have been raised regarding the validity of the appropriation in question, you have requested the opinion of this department regarding the constitutionality of the appropriation and whether the account can be legally encumbered and payments made out of it.

At the outset, we direct your attention to the fact that the site of the building to be constructed is at Columbia, Missouri, upon land owned by the Curators of the University. No attempt has been made to purchase or acquire land, and the Board of Curators is not challenging the action of the Governor in disapproving the particular part of Section 10.860.

Assuming that the Governor's partial veto was constitutional and valid, the remainder of the section and the appropriation contained therein stands approved. Therefore, the Curators could validly encumber the appropriation for the purpose of constructing a medical and surgical school on land presently owned by the University.

Without deciding the question, but assuming that the Governor's partial disapproval of the section in question was invalid and unconstitutional, we are confronted with the problem of determining the effect of said invalid action upon the particular appropriation. In other words, if the invalid partial disapproval of the Governor would operate to invalidate the entire appropriation contained in Section 10.860, then it could not be encumbered. On the other hand, if the partial disapproval, though invalid, would be ineffectual and a nullity, the appropriation would stand approved without the limiting language of the Governor's disapproval.

Therefore, the basic question to be determined is the effect of the Governor's partial disapproval of the appropriation, assuming that said partial disapproval was invalid.

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The authority which the Governor attempted to exercise in excluding and disapproving the portion of the appropriation in question was undoubtedly based on the provisions of Section 26 of Article IV of the Constitution of Missouri, which reads:

"The governor may object to one or more items or portions of items of appropriation of money in any bill presented to him, while approving other portions of the bill. On signing it he shall append to the bill a statement of the items or portions of items to which he objects and such items or portions shall not take effect. If the general assembly be in session he shall transmit to the house in which the bill originated a copy of the statement, and the items or portions objected to shall be reconsidered separately. If it be not in session he shall transmit the bill within forty-five days to the office of the secretary of state with his approval or reasons for disapproval. The governor shall not reduce any appropriation for free public schools, or for the payment of principal and interest on the public debt."

Many other states have a similar constitutional provision as that above quoted, and the appellate courts of other states have had occasion to determine the Governor's authority under such a constitutional provision and to determine the effect of the Governor's action on any appropriation where his partial disapproval was invalid as being unauthorized by the Constitution.

There are no Missouri cases bearing on this problem, but the weight of authority seems to be that, where the Governor's attempted disapproval of part of an appropriation bill is invalid because of the lack of constitutional authority, his action is ultra vires, ineffectual and a nullity and the appropriation stands approved. *Peebly v. Childers*, 95 Ok. 40, 217 P. 1049; *Stong v. People*, 74 Colo. 283, 220 P. 999; *State v. Forsythe*, 21 Wyo. 359, 133 P. 521; *Porter v. Hughes*, 4 Ariz. 1, 32 P. 165; *Commonwealth v. Dodson (Va.)*, 11 S.E. (2d) 120; In *Re Opinion of the Justices*, 294 Mass. 616, 2 N.E. (2d) 789; *Fergus v. Russell*, 270 Ill. 304, 110 N.E. 130; *Fulmore v. Lane*, 104 Tex. 499, 140 S.W. 405.

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In the case of *Fergus v. Russell*, supra, there was an appropriation of \$2,500.00 per annum for the publication of decisions of the court of claims. The Governor disapproved a portion of the appropriation by striking out the words "per annum." The constitutional provision provided that "if the Governor shall not approve any one or more of the items or sections contained in any bill, but shall approve the residue thereof, it shall become a law." The Supreme Court of Illinois held that the attempted veto was invalid and in declaring the effect thereof stated at N.E. l.c. 148:

" * * * The action of the Governor in attempting to veto portions of the various items indicated in the veto message was void and without any effect whatever. Those items remained valid enactments just as though the Governor had expressly approved of them or had allowed them to become a law without his approval."

In *Fulmore v. Lane*, supra, the Texas Constitution provided that "if any bill presented to the Governor contains several items of appropriation, he may object to one or more of such items, and approve the other portion of the bill." An appropriation was made for the Attorney General's office, and said bill further provided the manner in which said appropriation was to be expended. The Governor had vetoed this part of the bill. The court held that the Governor had no power to veto a portion of a bill or language qualifying an appropriation or directing the method of its use. In declaring that the veto of the Governor was unauthorized, the court further held that it was therefore ineffective and that the part of the bill attempted to be stricken out would remain as a part of the appropriation. Thus, at S.W. l.c. 412, the court said:

" * * * It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its uses, becomes noneffective. So that we are constrained to hold that that portion

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of the veto message contained in subdivision 3 of the statement of objections appended to the appropriation bill and filed in the office of the Secretary of State was unauthorized, and therefore noneffective, and the paragraph so attempted to be stricken out will remain as a part of the appropriation bill. * * *

In the case of *Peebly v. Childers* a salary appropriation bill for the University of Oklahoma had been reduced by the Governor from \$700,000.00 to \$500,000.00. The constitutional provision gave the Governor authority to disapprove an appropriation bill or any item therein contained, and provided that he was to communicate such disapproval to the house in which the bill originated, but that all items not disapproved would have the force and effect of law. In holding the Governor's disapproval invalid, and declaring the effect thereof, the court, at P. l.c. 1052, 1053, said:

"On the other hand, the Attorney General and his assistants, counsel for the Regents of the University of Oklahoma, and several of the lawyers briefing the case *amicus curiae*, present numerous well-considered cases from other jurisdictions having constitutional provisions similar to our section 12, holding that, where the Governor attempts to approve in part and disapprove in part distinct items contained in an appropriation bill, such attempted disapproval is void and without effect, and such items remain valid enactments, as though the Governor had expressly approved them or allowed them to become a law without his approval.

"The following are some of the cases so holding: * * *

"We have examined the cases cited with considerable care, and find that they are in point and support the proposition of law just stated. These cases constitute the great bulk of case law upon the question now under consideration. They are all based upon the theory that, under our

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form of government, the Constitution is a limitation upon the power of the legislative department of government, but is to be regarded as a grant of power to the other departments. Therefore, they conclude neither the executive nor the judiciary can exercise any authority or power, except such as is clearly granted by the Constitution, and where a claim of power is advanced by the executive, the question is not whether the power in question has been granted to the people, but whether it has been granted to the executive, and if the grant cannot be shown, he has no title to the exercise of the power.

"This reasoning we think is sound as applied to our Constitution, and leads to the conclusion that the action of the Governor in attempting to approve in part and disapprove in part the distinct items of an appropriation bill was without constitutional warrant, and therefore ineffectual for any purpose."

In the case of *Commonwealth v. Dodson*, supra, the Governor had vetoed certain parts of an appropriation bill, which the court held to be conditions or restrictions rather than items and that the Governor was without authority to veto them. In declaring the effect of the Governor's veto, which the court said was invalid, it was said at S.E. (2d) 1.c. 134:

"In the conservation and development of its physical resources the Commonwealth of Virginia is a great business corporation. To wipe away this appropriation bill under which it has and is operating would throw its fiscal affairs into undesirable confusion. This as a consequence should be avoided if there be any avenue of escape. We therefore reach the conclusion that these unconstitutional vetoes did not invalidate the budget bill as a whole, which, as we have seen, has been unconditionally approved."

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In the above case there had been an approval by the Governor of an appropriation bill similar to the approval given to the bill we are considering.

Perhaps the case nearest in point to the situation we are considering is that of In Re Opinion of the Justices, supra. In that case there had been an appropriation of \$100,000.00 for the payment of certain expenses with the condition that not less than \$50,000.00 were to be spent for specific purposes. This part of the bill the Governor undertook to disapprove. The constitutional provision of the State of Massachusetts provided that "the Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole." In holding the Governor's partial veto invalid, and declaring the effect thereof, the court, at N.E. l.c. 790, 791, said:

" * * * No power is conferred to change the terms of an appropriation except by reducing the amount thereof. Words or phrases are not 'items or parts of items.' This principle applies to the condition attached to the appropriation now in question. That condition is not an item or a part of an item. The veto power conferred upon the Governor was designed to enable him to recommend the striking out or reduction of any item or part of an item. In the present instance His Excellency the Governor did not undertake to veto the appropriation of \$100,000 made by item 101, or any part of it, nor to reduce that amount or any part of it apportioned to a specific purpose. He sought, rather, as shown by his message, to enlarge the appropriation made by the General Court by throwing the \$100,000 into a common fund to be used for any one of several different purposes. We are of opinion that the power conferred upon him by said article 63 does not extend to the removal of restrictions imposed upon the use of the

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items appropriated. It is plain that no other provision of the Constitution confers power upon the Governor to disapprove the condition attached to the item in question.

"The result is that the disapproval of that condition was a nullity. That is the only disapproval expressed in the message.

* * * * *

"The question then arises whether item 101 of the general appropriation bill has become law with the condition attached. Since the disapproval of the condition was without effect, the general approval of the act gave it validity. * * *"

Applying the foregoing authorities to the situation at hand, and assuming that the Governor's action was invalid and unconstitutional in excluding and disapproving a portion of Section 10.860, as hereinbefore quoted, we are constrained to the view that the attempted partial veto or disapproval would be ineffectual and a nullity and the appropriation as contained in said section would stand approved.

CONCLUSION

In the premises, it is the opinion of this department that the appropriation for the purpose of establishing and maintaining a four-year medical and surgical school as contained in Section 10.860 of House Bill No. 496, Laws of Missouri, 1951, page 250, is a constitutional and valid appropriation which may be legally encumbered for the purposes contained therein, and payments may be made out of said appropriation for the payment of said encumbrances.

This opinion, which I hereby approve, was prepared by my Assistants, Mr. Frank Thompson and Mr. C. B. Burns, Jr.

Respectfully submitted,

JOHN M. DALTON
Attorney General

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