



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

October 16, 1973

File No. S-631

CONSTITUTION:
Legality of expenditure
of reduced amount of
item of appropriation

Honorable George W. Lindberg
Comptroller
201 State House
Springfield, Illinois 62706

Dear Mr. Lindberg:

I have your letter wherein you state:

"I am attaching a copy of a memorandum signed today by the Governor, addressed to the members of the Senate, reducing certain amounts appropriated by Senate Bill 449 as passed by the Legislature. For example, page 1, line 11 of that appropriation bill as passed by the Legislature, appropriated for personal services \$150,398,100. This amount was reduced by the Governor to \$146,707,944. This was done by the Governor under the purported authority of the 1970 Constitution, Article IV, Section 9, paragraph (d). That paragraph likewise contains provisions with respect to the effect of that reduction and the further procedures with respect to the bill.

I desire your opinion as to whether or not I can now honor payroll and other vouchers drawing upon money appropriated under said line 11 of page 1, up to the reduced amount, or if I must await further procedure by the Legislature as outlined in such paragraph of the Constitution.

I solicit your speedy attention since payrolls are actually being held to determine this legal question. There are a great many similar situations in other bills and I will apply in those cases the same ruling you give me here in respect to this item."

Section 9(d) of article IV of the Illinois Constitution of 1970 reads as follows:

"(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount."

On July 16, 1973, the Governor signed Senate Bill 449 (P.A. 78-159) which is entitled "An Act making certain appropriations and reappropriations to the Board of Trustees of the University of Illinois." The signature of the Governor was subject to certain exceptions which were delineated in

an accompanying gubernatorial message addressed to the members of the senate of the 78th General Assembly.

In his accompanying message the Governor purports to reduce certain items of appropriations authorized by Senate Bill 449. Specifically, there appears at line 11 of page 1 of Senate Bill 449 an item of appropriation for personal services totaling \$150,398,100. The Governor desires to reduce this amount to \$146,707,944. The difference between these amounts is \$3,690,156.

You have asked whether or not you may honor payroll and other vouchers drawing upon money appropriated under said line 11 of page 1 of Senate Bill 449 up to the amount of \$146,707,944. In other words, you inquire as to whether or not the entire \$150,398,100 is ineffective until the General Assembly approves the Governor's reduction or acts to restore the \$3,690,156 to the item of appropriations; or, in the alternative, only the \$3,690,156 is ineffective until the General Assembly acts with regard to this amount while \$146,707,944 is effective and may be spent.

For the reasons that follow, I am of the opinion that you may honor payroll and other vouchers drawing upon money appropriated by Senate Bill 449 to the Board of Trustees

of the University of Illinois for personal services up to the reduced amount of \$146,707,944.

It is a fundamental rule of constitutional construction that the intent and meaning of a constitutional provision should be determined from the words used as they are commonly understood (Graham v. Dye, 308 Ill. 283, 286), unless such a reading would produce an absurdity, ambiguity or contradiction. (People v. Illinois Central Railroad Co., 273 Ill. 220. Thus, first consideration must be given to the wording of section 9(d) and particularly the second sentence thereof reading, "Portions of a bill not reduced or vetoed shall become law."

I deem it significant that the word "portions" was chosen rather than "item" which in the context of the words following would have limited applicability of the second sentence only to appropriation items neither eliminated nor reduced and thereby requiring an interpretation that balances of reduced items would have no operating effect until the General Assembly subsequently convened. It appears clear that the careful choice of the word "portions" in the second sentence was intended to address the precise question you raise and to make clear that the balance of a reduced item becomes

law upon the Governor's signature.

In resolving this possible ambiguity, it is appropriate to consider the historical background of the inclusion of the reduction veto provisions in the new constitution, as well as the Committee Reports and Debates of the members of the Convention. (Wolfson v. Avery, 6 Ill. 2d 78). This is particularly true since the gubernatorial authority to veto an entire item of an appropriation bill which existed under the prior constitution by reason of the amendment of 1884 to the 1870 constitution did not afford authority in the Governor to reduce an appropriation item. (Fergus v. Russel, 270 Ill. 304). The authorization in the new constitution for the reduction of line item appropriations was therefore an innovation of the Sixth Illinois Convention.

Because the "reduction veto" procedure involves financial, legislative and executive considerations, the provisions in question received the attention of three substantive standing committees of the Constitutional Convention, namely, the Committee on the Revenue and Finance, the Committee on the Executive Article, and the Committee on the Legislative Article. The reports of the committees and particularly the first two named throw considerable light on the answer to

the question you raise and the resolution of the possible ambiguity mentioned.

Proposal No. 1 of the Committee on Revenue and Finance presented to the Convention on April 28, 1970 (VII 6th Ill. Const. Con., Comm. Proposals, p. 2000 (1972)) submitted a proposed finance article. Section 5 of Proposal No. 1 (VII 6th Ill. Const. Con., Comm. Proposals, p. 2032 (1972)) reads as follows:

"The Governor may reduce or veto any item in appropriations passed by the General Assembly.

Each item or portion of an item not reduced or vetoed shall become law. Each item or portion of an item reduced to veto shall be subject to the same procedure as a bill vetoed by the Governor."

It is noteworthy that in the Convention's first encounter with the question, the second sentence of section 5 of the proposed Finance Article was worded substantially as the second sentence of section 9(d) was finally adopted, except that in section 5 the words "item" and "portion" were used disjunctively, the sentence reading: "Each item or portion of an item not reduced or vetoed shall become law." Thereafter throughout its deliberations the Convention sought to find a wording which would make clear that balances of

reduced appropriation items would become immediately effective upon signature of the Governor.

This interpretation follows from the Convention action which next followed. The Committee on the Executive Article, which independently studied the reduction veto, submitted its Proposal No. 1 on May 14, 1970 (VI 6th Ill. Const. Con., Comm. Proposals, p. 335 (1972)) and recommended section 32 (VI 6th Ill. Const. Con., Comm. Proposals, p. 350 (1972)), reading as follows:

"Section 32. Veto-Reduction and Item. The governor may reduce or veto any item in appropriations passed by the general assembly. Portions of a bill not reduced or item vetoed shall become law. Portions reduced in amount shall become law in that reduced form, except that they shall be law in their original form if again passed by a majority of all the members of each house, with the originating house acting first. Items vetoed shall be regarded as having failed of passage, unless similarly repassed by a three-fifths vote of all the members of each house. In all proceedings under this section, the vote shall be by yeas and nays, and entered on the journals, with each house having 15 days in which to act."
(Emphasis added)

Significantly this section explicitly stated "Portions reduced in amount shall become law in that reduced form * * *", thus supporting the broad interpretation of section 5 of the proposed Finance Article.

Delegate Friedrich, as spokesman for the Committee on the Executive Article, indicated the similarity of the two proposed sections. (III 6th Ill. Const. Con., verbatim tr., p. 1338 (1972)). Then on May 28, 1970, just before section 32 was adopted on first reading, the debate centered on the desirability of eliminating the word "portions" in the interest of stylistic improvement. Delegate Knuppel requested an editorial change so that the third sentence of section 32 would read, "Items reduced in amounts would become law in that reduced form." The chairman of the Committee on the Executive Article, Delegate Tecson, declared his preference to leave the sentence in its original form in section 32, although he recognized that the word "portions" posed some editorial problems. At no time in the debates was there any expression of an intent to amend section 32 in a manner which would delay the effective date of balances of reduced appropriation items.

Thereafter, on recommendation of the Style, Drafting and Submission Committee (V 6th Ill. Const. Con., verbatim tr., p. 3723 (1972)) the Convention elected to place section 32 of the proposed Executive Article in the proposed Legislative Article. While minor editorial changes occurred in the

process of transfer (including inadvertent creation of the ambiguity noted in the last line of article VI, section 9(d), neither the report of the Style, Drafting and Submission Committee (VI 6th Ill. Const. Con., Comm. Proposals, p. 1505, (1972)) nor subsequent floor action thereon disclosed any intent to alter the meaning of the language theretofore used in section 5 of the proposed Finance Article or section 32 of the proposed Executive Article. The word "portions" remained entrenched as the key word of the controlling sentence.

In light of the wording of section 9(d) and the history of the provision during its consideration and drafting by the Convention, I am of the opinion that items of Senate Bill 449 became law in their reduced form when the Governor signed the bill and returned it with his reduction veto message to the members of the senate. This assumes, of course, that all other provisions of the constitution relating to the passage and effectiveness of bills have been observed.

Even without reference to the history of section 9(d) during the Convention, the principles of constitutional construction lead one to the conclusion that the items in their reduced form became available for expenditure upon signature by the Governor.

The Constitution of the State of Illinois must have a reasonable and practical interpretation. (People v. Vickroy, 266 Ill. 384, 390). Narrow, technical reasoning should not be applied (People ex rel. Rogerson v. Crawley, 274 Ill. 139, 142) and, where the consequences of a particular construction of a constitutional provision would render its operation mischievous, that construction should be avoided provided the provision is susceptible of a different one. People ex rel. Stickney v. Marshall, 6 Ill. 672.

Applying these principles of constitutional construction in solving the question you raise regarding section 9(d) of the Illinois Constitution of 1970, it becomes evident that items of appropriation appearing in Senate Bill 449 that were reduced by the Governor became available for expenditure in their reduced form when the bill was signed by the Governor. Specifically, that item of appropriation set aside for personal services may be drawn upon up to \$146,707,944. The remainder (\$3,690,156) remains unavailable for expenditure until the General Assembly can act upon the Governor's reduction veto. No matter what action the General Assembly takes with respect to the amount the Governor desires to reduce (\$3,690,156) the appropriation in its reduced form will always be made available for expenditure. The General Assembly's action

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will have no effect on this amount whatsoever. It would produce an unnecessary hardship to hold that the entire amount of each item that the Governor proposes to reduce must remain untouched until the General Assembly acts with respect to each item.

Past administrative practice is also strong indicia as to the object and purposes of a constitutional provision. (11 I.L.P., Const. Law, sec. 27, p. 223 (1955)). It is my understanding that in the past whenever the Governor reduced an item of appropriations, vouchers drawing upon money appropriated by such items were honored to the extent of the reduced appropriation prior to any subsequent legislative action in regard to such reductions.

Therefore, I am of the opinion that items of Senate Bill 449 became law in their reduced form when the Governor signed the bill and returned it with his reduction veto message to the senate. Thus, you may honor payroll and other vouchers drawing upon such reduced appropriations up to the reduced amount prior to legislative action upon these reduction vetoes.

Very truly yours,

A T T O R N E Y G E N E R A L