

EFFECT OF GOVERNORS VETO OF CERTAIN
ITEMS OF GENERAL APPROPRIATION BILL
OF 1917.

Tallahassee, Fla., July 12, 1917.

*Honorable Ernest Amos, State Comptroller,
Tallahassee, Florida.*

My dear Sir:

Receipt of your communication of the 2d instant is acknowledged.

You ask for an opinion upon the question of the legal effect of the veto of the Governor of certain parts of Chapter 7277, Laws of Florida, the general appropriation bill passed at the recent session of the Legislature.

Your inquiry is as follows:

"In accordance with the provisions of Section 28, Article III, and Section 18, Article IV, of the Constitution of this State, the Governor filed with the Secretary of State his veto message to Chapter 7277, the General Appropriation Bill passed at the last session of the Legislature.

"While this veto message undertakes to eliminate certain features of the law, it does not take out any item from the Bill and, in my judgment, is inoperative for the purpose evidently intended; to say the least, I am in doubt about the effectiveness of the veto and will thank you to give me the benefit of your opinion upon the question, so that I may have the same for my guidance in the performance of my official duties.

"I am enclosing you herewith copy of the message, and will thank you for your usual prompt attention in the premises."

The veto message, a copy of which is attached to your communication, is in the following language:

"Tallahassee, Florida,
"June 2d, 1917.

"Hon. J. B. Johnson,
"President of the Senate,
"Capitol.
"Sir:

"In pursuance of Section 28, of Article III, and of Section 18, of Article IV, of the Constitution I have considered Senate Bill Number 627 a Bill to Be Entitled:

"‘An Act making appropriations for salaries and expenses of the State Government for six months of the year 1917, and for the year 1918, and for six months of the year 1919.’

"There are many good reasons why I should exercise the veto power in pursuance of Section 28, of Article III, and Section 18, of Article IV, of the Constitution. A comparison of this, the General Appropriation Bill, together with matters *in pais* of which I am advised manifests the ill-purpose and intent of those members of the Legislature who were moved and instigated by no laudible ambition to do that which was best for the general welfare of Florida, but rather in lieu thereof spent their energies in small acts that would and have tended to hinder the present administration.

"Among other things was the effort by a bill to abolish the Tax Commission. Their further action in this regard being shown by omitting from this the General Appropriation Bill any appropriations for the salaries and expenses of the Tax Commission, which Commission is indispensable to the State, if we are to have, as we must have, an equitable and uniform system of taxation as was contemplated by the Constitution and as was provided by Chapter 6500 of the Acts of 1913, which Chapter has not been repealed and which should not be repealed by any indirect method.

"Under the general headline of ‘Miscellaneous’ on page 4 of this Bill, the following item is stated:

“‘Salaries and expenses Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00.’

And on page 8 under the headline of ‘Miscellaneous’ the following item is stated:

“‘Salaries and expenses of Railroad Commissioners of which amount not more than \$3,600.00 shall be paid for special counsel, \$30,000.00.’

And on page 12 under the headline of ‘Miscellaneous’ the following item is stated:

“‘Salaries and expenses of Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00.’

“Laws may be passed or repealed in the manner pointed out by the Constitution and not by any indirect manner. To allow the language in the items above referred to to stand and become effective would violate the Constitution and would in an indirect manner repeal Section 1 of Chapter 5620 of the Acts of 1907, which Chapter is:

“‘The Railroad Commissioners of the State of Florida are hereby authorized to employ special counsel to advise them and to conduct any and all litigation or proceeding of any character instituted by or against them, and such special counsel shall be paid such compensation as said Commissioners deem proper out of the funds available for the maintenance of the Railroad Commission.’

“The wisdom of the Act of 1907 which authorizes the Railroad Commissioners to employ special counsel and to pay such compensation as the Commissioners deem proper cannot be doubted. Litigation of such character is both technical and important. The Commission should have expert counsel, to secure which they must have, as they are granted by the Acts of 1907, the power to employ counsel and to fix their compensation. I am sorry to note the disposition of a few members of the Legislature

who directed their attention in this regard and who were controlled, not so much by a desire to lesson expenses as by a desire to strike at certain Boards and persons, even going to the extent of trying, because of political affiliations, to punish by lessening the compensation,—conduct reprehensible. The Constitution and the statutes will suffice to defeat and avoid the effects of any such purpose, yet in pursuance of the Constitution I think it best that I should strike from the language of this Bill the following language:

“On page 4 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$1,300.00 shall be paid for services of special counsel.’

“And on page 8 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$3,600.00 shall be paid for special counsel.’

“And on page 12 under the headline ‘Miscellaneous,’ ‘of which amount not more than \$1,800.00 shall be paid for services of special counsel.’

Leaving the Bill as to Railroad Commissioners otherwise unaffected.

“Section 4 of this Bill also manifests the baneful spirit and purpose of a few members of the Legislature, yet I am satisfied that the language of this Section, which Section is a copy of the same Section in former General Appropriation Bills, except the use of two additional words, is due to the ill-advised unpatriotic action, purpose and intent of a few members of the Legislature, the evil effects of which should be avoided, not by the expensive process of a special session of the Legislature but by the people at the next election.

“Considering present conditions and being moved and instigated by a desire to foster and promote the general welfare of Florida and her people I deem it best that I should not return the Bill without my approval, and that I should strike only such parts of the Bill as I have above particularly stated, and that I should leave the

Bill otherwise unaffected, upon which consideration I have today approved the Bill and do herewith transmit the same to you for consideration at the next session of the Legislature in pursuance of Section 28, of Article III of the Constitution.

“Yours respectfully,

“(Signed) SIDNEY J. CATTS,
“Governor.”

It appears from the concluding paragraph of this message that the bill was approved by the Governor after certain of its provisions had been pointed out as objectionable.

The purpose of course was to strike from the statute certain designated parts of it upon the theory that this action was authorized by Section 18, of Article IV, of the Constitution of this State.

This section of the Constitution is as follows:

“The governor shall have power to disapprove of any item or items of any bills making appropriations of money embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto.”

The question presented for determination, as I understand it, may be stated about like this:

“Does this constitutional provision conferring upon the Governor of the State “the power to disapprove of any *item* or *items* of any bills *making appropriations* of money *embracing distinct items*” authorize him to strike from appropriation bills language intended to limit and restrict the expenditure of the funds embraced in an item or items in such bills, rendering such language void but leaving the appropriations and the amounts appropriated in tact?”

It will be noted that if the full effect intended is given

to every word used in this veto message the amount of no item in the bill is affected, no item is reduced as might be permissible (Commonwealth *ex rel* Elkin v. Barnett, 199 Pa. 161, 55 L. R. A. 882), and the aggregate of the appropriations is the same after the veto as it was before the veto. In other words, the sum of all the items appropriated by this bill is the same after full effect is given to the veto as it was when the bill passed out of the hands of the Legislature.

The word "item" as it is here employed in the Constitution means a definite and specified sum or amount appropriated by legislative action for a definite and specified purpose.

In the constitutional provision under consideration it is expressly stated that the Governor has the power to disapprove any *item* or *items* in bills appropriating money embracing *distinct items*, and *items* in such bills so disapproved shall be void unless passed over the veto in the manner provided by the Constitution.

A number of the states have constitutional provisions similar to this one and it is conceded everywhere that they are designed to keep out of general appropriation bills, which must of necessity be passed in order that the expenses of the State government may be met, appropriations which are objectionable by conferring upon the Governor power to eliminate such objectionable appropriations by withholding his approval therefrom while giving his approval to the remaining items which thereupon "shall be the law."

In considering a constitutional provision similar to ours where the Governor had undertaken to strike out certain provisions from an appropriation bill, the Supreme Court of Mississippi, in the case of *State v. Holder*, 76 Miss. 158, 23 So. 643, said:

"The true meaning of Section 73 is that an appropriation bill made up of several parts (that is, distinct appropriations), different, separable, each complete without the

other, which may be taken from the bill without affecting the others, which may be separated into different parts, complete in themselves, may be approved and become law in accordance with the legislative will, while others of like character may be disapproved, and put before the legislature again disassociated from the other appropriations."

In that case the question was presented and the court held that the Governor could not veto a portion of the appropriation bill that prescribed the conditions upon which moneys may be drawn from the treasury and approve the remainder of such bill.

The appropriations in this bill for the Railroad Commission are in the following language:

"Salaries and expenses Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00."

"Salaries and expenses of Railroad Commissioners of which amount not more than \$3,600.00 shall be paid for special counsel, \$30,000.00."

"Salaries and expenses of Railroad Commissioners of which amount not more than \$1,800.00 shall be paid for services of special counsel, \$15,000.00."

The veto message now under consideration in the first place proposes to strike from these appropriations the following language:

"Of which amount not more than \$1,800.00 shall be paid for services of special counsel."

"Of which amount not more than \$3,600.00 shall be paid for special counsel."

"Of which amount not more than \$1,800.00 shall be paid for services of special counsel."

The veto is not directed at the appropriations made for this purpose. They are not disturbed or affected, but the language which limits the amount of the appropriations which may be paid for services of special counsel is sought to be stricken from the bill.

This, in my opinion, is not an exercise of the authority conferred upon the Governor by the Constitution to disapprove an "item" in an appropriation bill, because the language limiting the amount of the appropriations that may be paid out for services of special counsel is not an "item" within the meaning of that term as it is employed in the Constitution. The language sought to be stricken affects the items in the statute to which it relates only by limiting the amount of such items that may be used for one purpose, but if this language were stricken these items in the bill would not be reduced but would remain the same in amount.

It is suggested that the language in this statute which limits the amounts that may be annually expended by the Railroad Commissioners for special counsel employed by them is in conflict with the provisions of Chapter 5620, Acts of 1907, Laws of Florida, giving authority to the Railroad Commissioners to employ special counsel and fix his compensation, and thereby operates indirectly and by implication as a repeal of this feature of the latter act and for that reason is objectionable. This may render it objectionable as a matter of policy, but the power to make appropriations of public money is in the Legislature. No State officer or employee can be paid for his services until the Legislature has made available by appropriate action the necessary funds for this purpose, and the Legislature has the absolute power to limit and fix the maximum amount that it will appropriate for this or any other purpose.

The effect of the action of the Legislature in this instance is to fix the amount that may be used annually by the Railroad Commissioners in the payment of the special counsel employed by them. In this bill the maximum amounts that may be paid to employees of the State in all other departments are definitely stated. The act of 1907, however, is not repealed by the provisions of this act limiting the amount that may be used for this pur-

post. It is still in force and if the general appropriation bill of 1917 should not contain this qualifying clause there would again be no limit on the amount of these items that could be expended by the Railroad Commissioners on this account.

The conclusion, I think, is inescapable that the veto of the Governor did not have the legal effect of eliminating from this bill the language limiting the amount that may be paid annually by the Railroad Commissioners to their attorney from the items appropriated for their salaries and expenses and that this provision of the statute is not inoperative because of any supposed conflict between it and Chapter 5620 of the Acts of 1907, Laws of Florida.

The other question involved relates to the effect of this veto message upon section 4 of the statute.

It is not clear that it was the purpose of the Governor to veto this section. Section 4 is referred to, as will be noted, in the last paragraph of the veto message, but it does not appear that it was understood that the Governor had the power or that he intended to veto this section of the act or any part of it.

It is in the following language:

"All moneys appropriated under head of contingent or incidental expenses shall be accounted for to the next Legislature in an itemized statement from each official having charge of any such fund, and no clerk, clerical assistant, or detective shall be employed by any State officer and paid out of the contingent fund appropriated for contingent expenses."

By its terms statements are required to be made by the heads of departments showing how moneys appropriated "under the head of contingent or incidental expenses" are expended and the use of such appropriations for certain enumerated purposes is forbidden. That this section as a whole is not such a part of this statute as may be regarded and treated as an "item" under the provisions of

Section 18, of Article IV, of the Constitution quoted above seems to me apparent and it is equally clear that words or clauses in a statute of this kind limiting the use of appropriations for contingent or incidental expenses and forbidding their expenditure for certain enumerated purposes cannot be stricken from the bill and rendered void by executive disapproval.

To hold that the Governor may strike words of limitation from an appropriation bill and thereby make available moneys appropriated by such bill for uses expressly forbidden in the bill itself would be conferring upon him legislative authority superior to that possessed by the legislative branch of the State government, and no one of course would contend for or sanction any such holding.

State v. Holdér, *supra*.

Under our Constitution supreme executive power is vested in the Governor, but the legislative authority of the State is vested in the Legislature, and the Governor, cognizant always of the relative powers of the two branches of the State government, would not consciously undertake to exercise powers properly belonging to the Legislature.

It may be that in approving or vetoing a bill the Governor acts as a part of the law-making power of the State (State ex rel Boyd v. Deal, 24 Fla. 293), but the veto of a bill is action negative in character. The word "veto" means "I forbid." He cannot initiate, amend or change legislation, and all bills, except bills "making appropriations of money embracing distinct items," must be approved or disapproved as a whole.

With regard to the latter class, as we have seen, items disapproved shall be void, but in this case no item in the bill has been disapproved and the veto message is, in my opinion, ineffectual and nugatory.

Respectfully submitted,

T. F. WEST,

Attorney General.