

Opinion No. 65-140

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BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Clay Buchanan, Director, Legislative Council, State Capitol Building, Santa Fe, New Mexico

QUESTION

FACTS

The Constitution, as amended in 1964, provides as follows in Article IV, Section 5:

"A. Each regular session of the legislature shall begin annually at 12:00 noon on the third Tuesday of January. Every regular session of the legislature convening during an odd-numbered year shall remain in session not to exceed sixty days, and every regular session of the legislature convening during an even-numbered year shall remain in session not to exceed thirty days. No special session of the legislature shall exceed thirty days.

B. Every regular session of the legislature convening during an even-numbered year shall consider only the following:

- (1) budgets, appropriations and revenue bills;
- (2) bills drawn pursuant to special messages of the governor;
- (3) bills of the last previous regular session vetoed by the governor."

QUESTIONS

1. Does this language require that the legislature consider all bills of the last regular session vetoed by the governor?
2. If not, may the legislature promulgate a rule regarding consideration of vetoed bills?
3. Do such bills have to be reintroduced?
4. Do such bills retain their designation as bills of the last regular session and the bill numbers of that session?
5. Should the bills be reprinted in the form in which the governor vetoed them?

6. Are such vetoed bills, when under consideration by the legislature, subject to amendment and substitution, or must such bills be passed by the legislature exactly as they stood when the governor vetoed them?
7. Is the legislature limited to an attempt, by vote, to override the gubernatorial veto, or may these considered bills be passed and sent to the governor in the usual manner?
8. May partially vetoed bills be reconsidered?
9. Is a bill which the governor allowed to die for lack of his signature considered to be a vetoed bill?
10. What about bills that were vetoed while the last regular legislative session was still in session and the governor actually returned the vetoed bill to the originating house during this time?
11. Is it the duty of either the governor or secretary of state to furnish the even-year legislature with the original bill and a copy of the enrolled and engrossed bill which was vetoed by the governor during the preceding regular session?

CONCLUSIONS

1. No.
2. Yes.
3. No.
4. Yes.
5. Yes.
6. They are not subject to substitution or amendment.
7. Legislature is limited to an attempt to override veto.
8. Yes.
9. Yes.
10. These bills may be considered by the even-year session.
11. No, but see analysis.

OPINION

{*235} ANALYSIS

Article IV, Section 5, does not require the legislature to consider all bills of the last regular session vetoed by the governor. The phrase "shall consider **only** the following" is a restrictive provision; it is not a mandate that the legislature must consider all bills of the last regular session that were vetoed.

Thus, in answer to your second question, the legislature may adopt a rule relating to the procedure to be used in considering bills of the last regular session which were vetoed. It could, just as an example, provide that the first five days of the session be devoted to such consideration. Article IV, Section 11.

In our opinion such bills do not actually have to be introduced again or be given new bill numbers. They should be reprinted in the form in which the governor vetoed them. If a motion is made to reconsider a bill vetoed by the governor at the last regular session, and if such motion carries, then the legislature will vote on the bill. If the necessary vote is obtained, the bill is passed over the governor's veto. In such case the governor's approval of the bill is not required.

We do not believe that such bills can be amended or substitutions made therefor. If this were permissible, the legislature would be considering a bill that was not vetoed by the governor. And the idea behind the short, thirty-day, even-year session is to limit the matters that may be considered.

As to partially vetoed bills, only the portion partially vetoed is to be considered. This necessarily follows because the portion of the bill which was not partially vetoed is existing law. Had the legislature intended that the even-year session consider only bills totally vetoed in the previous regular session, it would have been very simple to so state in the constitutional amendment which it proposed and which was adopted by the electorate in 1964. There being no such restriction, either express or implied, we conclude that the vetoed parts or items may be considered in the even-year session.

A bill which the governor allowed to die for lack of signature is a vetoed bill for purposes of Article IV, Section 5. The name commonly given to this type of action, or more properly stated, inaction, is the "pocket veto". To veto a bill passed by the legislature means a refusal to assent thereto by the chief executive whose assent is necessary to make the bill become law. **Cleveland v. Martin**, La., 29 So.2d 516. To hold otherwise would give the chief executive a method whereby he could kill a legislative bill and prevent its consideration at the next regular session.

Even if a bill was vetoed in the last regular session and was returned to the house of origin during the session, still the bill can be considered by the legislature in the even-year session. This is because it is still a bill "of the last previous regular session vetoed by the governor."

In answer to your last question, the constitution imposes no duty upon the governor or the secretary of state to furnish the legislature, in even-numbered years, with the bills vetoed by the governor in the preceding regular session. However, the chief executive does file such bills with the secretary of state. Therefore, in the interest of orderly procedure and comity between the executive and legislative branches of government, the secretary of state should furnish the original bill and a copy of the enrolled and engrossed bill vetoed in the previous legislative session to the legislature no later than the opening day of the even-year regular session.