

Opinion No. 70-18

February 13, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Maralyn Budke Director Legislative Finance Committee State Capitol Santa Fe, New Mexico

QUESTIONS

FACTS

Sections 1, 5 and 6 of House Bill 300 provides as follows:

"Section 1. DEFINITIONS. -- As used in the General Appropriations Act:

A. Amounts listed under the column heading "general fund" are appropriated from the state general fund created under Section 11-2-3.1, N.M.S.A., 1953 Compilation.

B. Amounts listed under the column heading "other state funds" are appropriated, within available revenues, from income from taxes, fees, charges, gifts, grants or other sources of income available according to law.

C. Amounts listed under the column heading "federal funds" are appropriated, within available revenues, from income received pursuant to federal grants, contracts, cooperative agreements, payments for services and other federal income.

D. Amounts listed under the column heading "total" are provided for informational purposes only and are not appropriations.

Section 5. REPEAL. -- All appropriations made for the fifty-ninth fiscal year in Laws 1969, Chapter 282, except for the appropriation made in Section 10, Public School Support, are repealed.

Section 6. CONTINGENCY CLAUSE. -- The appropriations made in this general appropriations act shall be contingent upon the definitions contained in Section 1 and upon Sections 5 and 6 of this act."

QUESTIONS

May the Governor line item veto any part or all of the language in Sections 1, 5 or 6, as set forth above, without vetoing the entire act?

CONCLUSION

No.

OPINION

{*29} ANALYSIS

In Attorney General Opinion No. 69-25 issued April 9, 1969, this office thoroughly discussed the provisions of Article IV, Section 22 of the New Mexico Constitution relating to line item vetoes. After reviewing the relevant decisions of our Supreme Court and appellate courts of other jurisdictions having similar constitutional provision we concluded that:

"The Governor's power to veto 'part or parts' of an appropriation bill allows him to veto specific directions as to the manner and purpose of distribution of an appropriation found in the general appropriation act so long as the appropriation in the approved portions of the {*30} act **was not made dependent or contingent on the vetoed provision.**"

Since under Section 6 of House Bill 300, the entire appropriations act is made contingent upon the definitions contained in Section 1, the repeal of the appropriation made for the 59th Fiscal Year by the first session of the 29th Legislature and the contingency clause, the Governor may not line item veto Sections 1, 5 or 6 in whole or in part without vetoing all of House Bill 300.

By: Gary O'Dowd

Deputy Attorney General