

Opinion No. 71-22

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BY: OPINION OF DAVID L. NORVELL,

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QUESTIONS

QUESTION

Assuming the passage and approval by the governor of House Bill 156 and the passage of House Joint Resolution 10, and in light of Article 4, Sections 15, 16 and 30 of the Constitution of New Mexico, would the expenditure for the purposes expressed in HJR 10 under the procedures of HB 156 be constitutional?

FACTS

House Bill 156, presently pending before the legislature, creates the "state capitol improvement fund" and authorizes expenditures from this fund upon prior authorization of the legislature to the chief of the property control division and his submittal of vouchers for disbursements from the fund. The bill specifies the purposes for expenditures and includes among these purposes ". . . construct, improve, alter, remodel, equip, furnish or reconstruct capitol buildings and grounds, including the executive mansion . . ." House Joint Resolution 10, also pending, provides the legislative authorization for ". . . equipping, altering, improving and furnishing the executive mansion . . ." It authorizes fifty thousand dollars (\$ 50,000) for these purposes.

CONCLUSION

No, but see analysis.

OPINION

{*36} ANALYSIS

The House of Representatives enacted House Bill 156 creating a "State Capitol Improvement Fund." Into this fund is to be placed "all money derived from proceeds of bonds authorized by the legislature for the improvement, alteration and reconstruction of capitol buildings and grounds, including the executive mansion, for the acquisition of land for additional buildings and grounds, for the design and construction of additional buildings, for the equipping, remodeling and furnishing of capitol facilities, and all other

money which may be in the future provided by law." The bill states that "no expenditure shall be made from the state capitol improvement fund without the prior authorization of the legislature." The bill also provides for certain expenditure controls by the Department of Finance and Administration and the State Board of Finance.

There is no constitutional problem with House Bill 156 itself. However, the legislature proposes to approve the use of various sums of money from this fund by joint resolution of that body. This is clearly an appropriation by the legislative resolution and is contrary to Article IV, Section 16 which provides that "all other appropriations shall be made by separate **bills**." Joint Resolutions, of course, are not bills and do not go to the governor for his approval. Such a procedure has the effect of denying the governor his constitutional prerogative of vetoing or line item vetoing bills appropriating money. Article IV, Section 22 specifically provides that

"Every bill presented to the governor during the last three days of the session shall be approved by him within twenty days after the adjournment and shall be by him immediately deposited with the secretary of state. Unless so approved and signed by him such bill shall not become a law. The governor may in like manner approve or disapprove any part or parts, item or items, of **any bill appropriating money**, and such parts or items approved shall become a law, and such as are disapproved shall be void unless passed over his veto, as herein provided."

To appropriate a specific sum for a specific purpose out of **any** fund by legislative resolution is to deny the governor {37} his constitutional veto power and his line item veto power over bills appropriating money and is an unconstitutional usurpation of the chief executive's constitutional powers.

To say that he can veto the bill creating a fund is no answer. That is an all-or-nothing alternative quite out of keeping with his constitutional selective powers over money items. Dozens of funds could be created and then expenditures out of them authorized by the legislature only. Our constitution does not permit this procedure.