

Opinion No. 77-11

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OPINION OF: Toney Anaya, Attorney General

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TO: Senator John Rogers, Room 321-D, Legislative-Executive Building, Santa Fe, New Mexico 87503

GENERAL APPROPRIATIONS BILL-ARTICLE IV, SECTION 16-LEGISLATION.-
Language in the general appropriations bill which repeals or amends existing statutes not related to the appropriation would be void under Article IV, Section 16.

FACTS

In the First Session of the Thirty-third Legislature, the House Appropriations and Finance Committee Substitute for House Bill 2 (HAFCS/HB 2), the General Appropriations Bill, contains the following language in connection with the appropriation to the Northern New Mexico State School at El Rito:

Notwithstanding any other provision of law, the university of New Mexico northern branch is hereby dissolved as of July 1, 1977.

Notwithstanding any other provisions of law, the northern New Mexico state school is hereby empowered as of July 1, 1977, to provide up to, but not more than, two years of credit and non-credit academic, technical and vocational instruction beyond high school. pp. 39-40.

QUESTIONS

Does the foregoing language in HAFCS/HB 2 violate the restrictions placed on general appropriation bills by Article IV, Section 16 of the New Mexico Constitution?

CONCLUSIONS

Yes.

ANALYSIS

Article IV, Section 16 provides, in pertinent part, that:

General appropriation bills shall embrace nothing but appropriations for the expense of any executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools, and other expenses required by existing laws; but if any

such bill contains any other matter, only so much thereof as is hereby forbidden to be placed therein shall be void.

OPINION

{*108} The New Mexico Supreme Court has consistently held that Article IV, Section 16 does not require that the general appropriations bill be restricted to "bare appropriations" but rather that it may contain language covering matters which are "germane to and naturally and logically connected with the expenditures of the moneys provided in the bill." *State ex rel. Whittier v. Safford*, 28 N.M. 531, 535, 214 P. 759 (1923). "It is only such matters as are foreign, not related to, nor connected with such subject, that are forbidden." 28 N.M. at 534-35. See also *State ex rel. Lucero v. Marron*, 17 N.M. 304, 128 P. 485 (1912); *State ex rel. Prater v. State Bd. of Finance*, 59 N.M. 121, 279 P.2d 1042 (1955); *State ex rel. Holmes v. State Bd. of Finance*, 69 N.M. 430, 367 P.2d 925 (1961); *National Bldg. v. State Bd. of Educ.*, 85 N.M. 186, 510 P.2d 510 (1973).

Thus, the Supreme Court has sustained language in the general appropriations bill that would authorize the issue and sale of certificates of indebtedness, *State ex rel. Lucero v. Marron*, *supra*, provide for the expenditure of the money so appropriated, *State ex rel. Whittier v. Safford*, *supra*; authorize the State Board of Finance to reduce operating budgets appropriated therein, *State ex rel. Holmes v. State Bd. of Finance*, *supra*; and direct a division of the State Department of Education to relocate its offices, *National Bldg. v. State Bd. of Educ.*, *supra*.

In other cases, the Supreme Court has found that language in the general appropriations bill violates Article IV, Section 16 when it constitutes "general legislation of a permanent nature." *State ex rel. Delgado v. Sargent*, 18 N.M. 131, 137, 134 P. 218 (1913). There the court held that language in the general appropriations bill was unconstitutional when it "bears some relation to the appropriations made in the act out of the salary fund but it goes further and provides a permanent policy thereafter to be pursued which can bear no relation to the appropriations made in that act." 18 N.M. at 137. Similarly, in *State ex rel. Prater v. State Bd. of Finance*, *supra*, the court held that language which attempted to provide for monies beyond the two years was general legislation prohibited by Article IV, Section 16.

The questionable substantive language here would, essentially,

- (1) terminate the Northern Branch; and
- (2) empower the Northern New Mexico State School to provide certain levels of instruction.

Applying the rationale of the previous decisions relating to Article IV, Section 16, these provisions could be considered "logically connected" to the appropriation. However the

legislation is certainly "of a permanent nature" in that, unlike the language considered in previous cases, these provisions affect existing substantive statutes.

Evidently, the proposed appropriation for the Northern New Mexico State School at El Rito was calculated to accommodate a plan under which the Northern Branch would be terminated and the Northern New Mexico State School would assume the educational obligations of the Northern Branch. The provisions inserted in HAFCS/HB 2 would presumably insure the implementation ^{*109} of that plan. While the purpose of these provisions may be related to the appropriation, the provisions themselves, each qualified by the phrase "notwithstanding any other provision of law," would attempt to supersede existing statutes not "logically or naturally connected" with the appropriation.

Section 73-30-18(F), NMSA 1953 Comp. provides for the termination of a branch community college by mutual agreement of the board of the branch and the Board of Regents of the parent institution or by six months notice of termination by either board. It is not, therefore, necessary to legislate the dissolution of the Northern Branch in HAFCS/HB 2. To do so would be to include in the general appropriations bill a substantive provision which usurps an existing statute not "logically or naturally connected with" the appropriation. A provision in the general appropriations bill which does what could be done by a law not connected to the appropriation would also, in that sense, not be connected to the appropriation and would be void under Article IV, Section 16. Moreover, such a provision would appear to be of a permanent nature and thus in violation of Article IV, Section 16. See *State ex rel. Delgado v. Sargent*, supra.

Section 73-22-34, NMSA 1953 Comp. defines the purposes of instruction at the Northern New Mexico State School and the effect of the language in HAFCS/HB 2 referring to levels of instruction is to amend that statute. A provision of the general appropriations bill amending a statute not connected with the appropriation would similarly not be connected with the appropriation as well as appearing to be of a permanent nature. Such a provision would also be void under Article IV, Section 16.

In any event, Section 73-22-34, supra, would properly be amended by the provisions contained in House Bill 326, First Session, Thirty-third Legislature. Enactment of House Bill 326 would properly accomplish the purposes which the First Session, Thirty-third Legislature, apparently intended in enacting the above-quoted provisions of HAFCS/HB 2 which has been sent to the Governor of signature.

It would seem, therefore, that if a provision of the general appropriations bill effectively usurps or amends a statute which, as such, is not "logically or naturally connected with" the appropriation, then that provision is also not connected to the appropriation and takes on a permanent character. Accordingly, we conclude that those portions of HAFCS/HB 2 set out at the beginning of this opinion would violate Article IV, Section 16 and would be deemed void.

Finally, we would note that our conclusion here refers only to attempts to legislate substantive matters in a general appropriations bill and would not apply to substantive matters included in the form of a condition upon the appropriation.

ATTORNEY GENERAL

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