Opinion No. 79-13

April 6, 1979

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: The Honorable Shirley Hooper, Secretary of State, Executive-Legislative Building, Santa Fe, New Mexico 87501

LEGISLATURE AND LEGISLATORS

In order to effect a valid veto, the governor need not return the enrolled and engrossed copy of the bill so long as he returns a copy with the legislative history together with his objections within three days.

On February 20, 1979, the enrolled and engrossed copy of Senate Bill 63 was presented to the Governor for approval. That same day the Governor (1) returned to the Senate the original copy of Senate Bill 63 in its blue folder together with an original and 10 copies of his veto message, Senate Executive Message No. 48, and (2) deposited with the Secretary of State the enrolled and engrossed copy of Senate Bill 63, unsigned, together with a copy of the veto message. On February 21, 1979, Senate Executive Message No. 48 was read and entered into the journal of the Senate. The enrolled and engrossed copy of Senate Bill 63 was delivered to the Chief Clerk of the Senate by the Office of the Secretary of State on March 13, 1979. The session adjourned on March 17, 1979.

QUESTIONS

Does the failure of the Governor to return the enrolled and engrossed copy of Senate Bill 63 to the Senate with the veto message render the veto invalid under Article IV, Section 22, New Mexico Constitution?

CONCLUSIONS

No.

ANALYSIS

Article IV, Section 22 provides, in part pertinent to these facts, that:

"Every bill passed by the legislature shall, before it becomes a law, be presented to the Governor for approval. If he approves, he shall sign it, and deposit it with the Secretary of State; otherwise, he shall return it to the house in which it originated, with his objections, which shall be entered at large upon the journal; and such bill shall not

become a law unless thereafter approved by two-thirds of the members present and voting in each house by yea and nay vote entered upon its journal. Any bill not returned by the governor within three days, Sundays excepted, after being presented to him, shall become a law, whether signed by him or not, unless the legislature by adjournment prevent such return."

In this manner, the New Mexico Constitution has conferred upon the Governor the power of veto. That power, however, has generally been viewed as an executive encroachment on the legislative function, an exception to the doctrine of the separation of powers, and, as such, it must be strictly construed. **Arnett v. Meredith,** 275 Ky. 223, 121 S.W.2d 36 (1938); 119 A.L.R. 1183. It *{*30}* exists only to the extent granted by constitution. **Jessen Associates, Inc. v. Bullock,** 531 S.W.2d 593 (Tex. 1975).

The New Mexico Supreme Court has specifically found that when the Governor exercises a partial veto, he is acting in a "quasi-legislative capacity." **State ex rel. Dickson v. Saiz,** 62 N.M. 227, 237, 308 P.2d 205 (1957). Further, in holding the Governor's exercise of the veto power is subject to judicial review, the Court has stated:

"The power of veto, like all powers constitutionally conferred upon a governmental officer or agency, is not absolute and may not be exercised without any restraint or limitation whatsoever. The very concept of such absolute and unrestrained power is inconsistent with the concept of 'checks and balances,' which is basic to the form and structure of State government created by the people of New Mexico in their constitution, and is inconsistent with the fundamental principle that under our system of government no man is completely above the law."

State ex rel. Sego v. Kirkpatrick, 86 N.M. 359, 362, 524 P.2d 975 (1974). Finally, this office has concluded that the provisions of Article IV, Section 22, prescribing the manner of veto are mandatory and failure to follow the constitutionally defined procedure would nullify the veto. Opinion of the Attorney General No. 69-20, dated March 18, 1969.

In order to have effected a veto of Senate Bill 63 in accordance with Article IV, Section 22, the Governor was required to return the bill to the Senate with his objections within three days. The weight of authority would indicate that each element of this procedure is mandatory. The bill must be returned to the house in which it originated. See, e.g., **Maloney v. Rhodes,** 45 Ohio St. 2d 319, 345 N.E.2d 407 (1976); Opinion of the Attorney General No. 59-28, dated March 12, 1959. The Governor must file his objections with the returned bill. See, e.g., **State ex rel. Browning v. Blankenship,** 154 W. Va. 253, 175 S.E.2d 172 (1970); **Arnett v. Meredith, supra.** And, the Governor must return the bill within the time specified. See, e.g., **Redmond v. Ray,** 268 N.W.2d 849 (Iowa 1978).

Under the facts presented here, it would appear that each of these fundamental requirements was satisfied. The sole question then is whether it is further required that the enrolled and engrossed copy of Senate Bill 63 be returned to the Senate with the

veto message so that the return of the original copy in the blue folder would constitute a failure to follow a mandatory constitutional procedure.

We have found no reported cases which consider the particular question presented here. However, in **Wright v. United States,** 302 U.S. 583, 82 L. Ed. 439, 58 S. Ct. 395 (1938), the Supreme Court indicated that unnecessary technicalities should not be allowed to frustrate the purpose of constitutional veto provisions. That case referred to Article I, Section 7, Paragraph 2 of the United States Constitution which provides essentially that if the President does not return a bill with his objections to the house in which it originated within ten days, it shall become law. It was alleged that a veto returned to the Secretary of the Senate while the Senate was temporarily recessed did not satisfy those requirements. The Court found that the Constitution did not define what shall constitute *{*31}* a return of a bill and held that the veto was valid. The Court explained that:

"The constitutional provisions have two fundamental purposes; (1) that the President shall have suitable opportunity to consider the bills presented to him, and (2) that the Congress shall have suitable opportunity to consider his objections to bills and on such consideration to pass them over his veto provided there are the requisite votes. . . . We should not adopt a construction which would frustrate either of these purposes." 302 U.S. at 596.

Citing **Wright v. United States, supra,** courts have found that so long as the legislative body is given the opportunity to consider the executive veto, constitutional purposes are satisfied. See, e.g., **In Re Interrogatories of the Colorado Senate of the Fifty-first General Assembly, Senate Resolution No. 5,** 578 P.2d 216 (Colo. 1978). Return of the original rather than enrolled and engrossed copy of Senate Bill 63 did not prevent the Senate from properly considering the Governor's veto of that bill nor his stated objections. The constitutional purposes of Article IV, Section 22 were satisfied under the facts here in contrast to the facts stated in Opinion of the Attorney General No. 69-20, **supra,** where the vetoed bill was returned to the Secretary of State and not available for legislative consideration.

Article IV, Section 22 refers only to a "bill." Nowhere does it specify that the bill must be the enrolled and engrossed copy. To read such a requirement into this provision and thereby defeat a veto which is otherwise consistent with the intent of the provision is contrary to rules of constitutional construction. Courts may not permit legal technicalities to frustrate the intent of the framers. **Board of Comm'rs of Bernalillo County v. McCulloh,** 52 N.M. 210, 195 P.2d 1005 (1948). Nor may courts by construction enlarge the scope of a constitutional provision beyond its intent. **Board of Educ. of Gallup Municipal School Dist., Nos. 3 and 4, McKinley County,** 57 N.M. 445, 259 P.2d 1028 (1953).

This conclusion does not disregard the difference between the original bill copy and the enrolled and engrossed copy, but rather recognizes that the difference is immaterial for purposes of Article IV, Section 22. The enrolled and engrossed copy of a bill is the final,

corrected copy of what remains of the original bill proposed by the sponsors after legislative amendments and alterations. It is signed by the presiding officers of each house, see Article IV, Section 20, N.M. Const., and carries a signature line for the Governor's approval. The original bill copy in the blue folder contains all the legislative history but it has not been put in final form and it has not been corrected. To provide knowledge of the substantive matters contained in a bill when it is returned for consideration of a veto, the original copy in the blue folder is as effective as the enrolled and engrossed copy.

The significance of an "enrolled and engrossed bill" is that such a bill, properly signed and authenticated, approved by the Governor and deposited with the Secretary of State, is conclusive as to the regularity of its enactment and the courts may not look behind it to the journals to determine whether constitutional requirements have been met. **Thompson v. Saunders,** 52 N.M. 1, 189 P.2d 87 (1948); but see, **Dillon v. King,** 87 N.M. 79, 529 P.2d 745 (1974). This "enrolled bill" *{*32}* rule, however, is not relevant to the provisions of Article IV, Section 22, and should not be extended to require that only an enrolled and engrossed copy of a bill may be returned with a veto.

In sum, the timely return to the Senate of the original bill in its blue folder, together with a veto message stating the Governor's objections, constitutes a valid veto of Senate Bill 63 in accordance with Article IV, Section 22.

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