

N.D.A.G. Letter to Sinner (March 14, 1985)

MEMORANDUM

TO: Governor George A. Sinner
FROM: Attorney General Nicholas J. Spaeth
RE: Governor's Authority to Veto Legislation
DATE: March 14, 1985

The governor's constitutional authority to veto legislation is found in N.D. Const. Art. V, §§ 9 and 10. N.D. Const. Art. V, §9 provides the general authority of the governor to veto legislation and to return it to the legislature for further consideration. N.D. Const. Art. V, §10 provides the governor with the power to:

[D]isapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or the parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void .

In State, ex rel., Link v. Olson, 286 N.W.2d 262 (N.D. 1979), the North Dakota Supreme Court had the occasion to interpret this constitutional language as to the scope of the governor's authority to partially veto legislation. In this case, the Supreme Court concluded that the governor's authority to veto legislation was conditioned, in part, by the subject matter of the legislation in question. The Court concluded that the governor may exercise his partial veto power under N.D. Const. Art. V, §10 and may only veto items or parts in appropriation bills that are related to the vetoed appropriation and are so separate and distinct that, after removing them, the legislation is able to stand as workable legislation which complies with the fundamental purpose that the legislation intended to effect when the whole legislation was enacted. Id. at 271. The governor, however, may not veto conditions or restrictions on appropriations without vetoing the entire appropriation itself. Id. Citing past experiences of other North Dakota governors, the Court concluded that past governors have vetoed provisions in legislation other than merely money items of appropriation where substantive provisions were commingled with line items of appropriation in one piece of legislation. In all of these cases, the legislation which was not affected by the veto was able to take effect despite the lack of veto provisions.

This was not the case in State, ex rel., Link v. Olson, supra, where the governor's veto left a bill which referred to a nonexistent office. Where items of a bill are so interrelated as to cause the bill to be unworkable should a partial veto of an appropriation occur, the entire bill must be vetoed or approved in its entirety.

However, there appears to be no authority for the governor to use his veto power, or any other power provided him by the Constitution, to alter appropriations contained within bills submitted to him for approval. Since the governor is a mere executive officer,

his general authority is narrowly limited by the Constitution of our state and he may not exercise any legislative function except that granted to him expressly by the terms of our Constitution. 38 Am.Jur.2d, Governor, §4 (1968) . So, our Constitution does not provide the governor with the authority to make appropriations or to alter appropriations as enacted by the legislature, he simply does not have such authority.

In summary, the governor is provided with the authority by our Constitution to veto particular items or parts of any bill which makes the appropriations of money or property which embrace distinct and separate items. The veto must only apply to the distinct item throughout the bill and will be permissible only where the remainder of the bill will be allowed to take effect without impairment due to the partial veto. Where the bill in question embraces a single item and partial veto is attempted, the veto will not succeed. Further, where a partial veto is attempted with a bill that contains distinct items, but the veto is performed so as to render portions of the bill useless or unable to take effect, the partial veto will not be allowed to take place. Instead, the governor must only veto those portions of an appropriations bill which removes the offensive portions and allows the unoffensive portions to take effect as law without serious impairment. Further, the governor does not have the constitutional authority to alter appropriations through his veto authority.

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