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GOVERNOR—CONSTITUTIONAL VETO POWER—SALARY  
AND WAGE ADJUSTMENT—ITEM—DELETION—AMENDED  
HOUSE BILL 484, 96 GENERAL ASSEMBLY.

Constitutional veto power of the Governor discussed.

Columbus, Ohio, July 11, 1945

Hon. Frank J. Lausche, Governor of Ohio,  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"I direct your attention to the paragraph which begins at the bottom of page 97 and ends at the top of page 98 of House Bill No. 484 and appears under the general heading of Salary and Wage Adjustment. This paragraph, among other provisions, gives to the employees of the state the right to retain any pay increase up to \$240 granted in the last half of 1944, in addition to the general pay raises originally granted in Senate Bill No. 1.

You will recall that Senate Bill No. 1 resulted in about an average of 25% increase over the base salary of state employees. The amendment contained in the paragraph which I described above will result in some employees receiving an increase of approximately 35% over the base pay.

I have not yet reached a definite decision whether or not I will veto the provision which grants to all employees, in addition to the 25% aggregate pay raise, the sum of not to exceed \$240 in pay raises granted in the last half of 1944.

I would like to specifically know whether that portion of the paragraph which grants to employees the \$240 pay raise received in the last half of 1944 can be separated from the balance of the paragraph, for veto purposes. I request your opinion on whether or not it would be possible for me to veto the \$240 provision without invalidating the entire provisions of this paragraph."

The power to approve or disapprove bills passed by the General Assembly is given to the Governor by Section 16 of Article 11 of the Constitution of Ohio, wherein it is provided:

“\* \* \* Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, \* . \* . The governor may disapprove any item or items in any bill making an appropriation of money and the item or items, so disapproved, shall be void, unless repassed in the manner herein prescribed for the repassage of a bill.”

The paragraph of Amended House Bill No. 484, referred to in your letter, is a part of the so-called Salary and Wage Adjustment provisions in said act, which provisions, after appropriating money therefor, prescribe increases in the salaries and wages of certain state employees. Said paragraph, together with the provisions directly relating thereto, read as follows:

“(a) All state employees in the service of the state on the effective date of Senate Bill No. 1, 96th General Assembly, shall continue to receive during the period this act is operative, the increase in salary or wage granted to or received by them in accordance with the salary and wage adjustment provisions of House Bill 227 of the 95th General Assembly. In addition to the employees defined in the preceding sentence, all state examiners and assistant state examiners in the Bureau of Inspection and Supervision of Public Offices who held such positions on June 24, 1943, and who have held such positions continuously thereafter until the effective date of Senate Bill No. 1, 96th General Assembly, shall, for the period during which this act is effective, receive salary and wage increases in accordance with the salary and wage adjustment provisions of House Bill No. 227 of the Ninety-fifth General Assembly.

(b) In addition to the above there is herein provided a ten per cent (10%) increase on the base salary of all state employees not herein specifically excluded, plus two per cent (2%) of such base salary for each full calendar year such state employee has been in the state service prior to the effective date of this act, or shall be subsequent thereto, not to exceed five (5) years (not to exceed a maximum of ten per cent). If such employee entered the state service at any other time than the beginning of the cal-

endar year, the remaining portion of the calendar year during which such employee entered the state service shall be considered a full calendar year for the purposes hereof.

Provided, however, that in no event shall the aggregate amount of the increases prescribed herein exceed the sum of Nine Hundred Dollars (\$900.00) per annum in the case of any one employee and, provided further that any employee who, between June 30, 1944, and December 31, 1944, received an increase in excess of Two Hundred Forty Dollars (\$240.00) in the annual salary he was receiving on the former date exclusive of any increase he may have been receiving by reason of the salary and wage adjustment provisions of House Bill No. 227 of the 95th General Assembly, shall receive only the difference resulting when the amount by which his such salary was so increased in excess of Two Hundred Forty Dollars (\$240.00) is subtracted from the aggregate amount of the increases prescribed herein applicable to his case, all of which increases shall in no event exceed Nine Hundred Dollars (\$900.00) per annum."

Your inquiry resolves itself into the question of whether or not the veto power conferred upon you by the Constitution, may lawfully be exercised by deleting from the paragraph last above quoted the term "in excess of Two Hundred Forty Dollars (\$240.00)" as the same appears twice therein. It will be noted that the Constitution provides the Governor may disapprove any item or items in any bill making an appropriation of money. Amended House Bill No. 484 is entitled "A bill to make general appropriations for the biennium beginning January 1, 1945 and ending December 31, 1946." Obviously, therefore, the bill in question is one making appropriations of money. The question which then presents itself is whether the language under consideration by you for veto is an "item" in said bill.

The word "item" is defined in Webster's New International Dictionary, Second Edition, as follows:

"An article; a separate particular in an enumeration, account, or total."

It is scarcely conceivable how the words "in excess of Two Hundred Forty Dollars," as the same appear in the salary and wage adjustment provisions above quoted, can be regarded as a separate particular in an enumeration, account or total. Certainly such terms constitute no part of any language which appropriates money. As stated, the General

Assembly, after appropriating money to provide for salary and wage increases, proceeded to set up a rather comprehensive and elaborate plan under which the money so appropriated was to be spent, and as a part of such plan it provided that any increases in excess of Two Hundred Forty Dollars received in their base salaries by state employes during the latter half of the year 1944, should be deducted from the increases in salary granted under the act. Clearly this provision is not a distinct and severable part of the scheme or plan set up by the General Assembly. To delete said terms from the provisions in question would be tantamount to amending a legislative act which, of course, does not lie within the power of the Governor. The veto is distinctly a negative, and not a creative, power. The Governor may not exercise any creative legislative power whatsoever. The executive, in every republican form of government, has only a qualified and destructive legislative function, and never creative legislative power. *State, ex rel. Teachers and Officers v. Holder*, 76 Miss. 181; *Fergus v. Russel*, 270 Ill. 304; *Pickle v. McCall*, 86 Tex. 212; *Lukens v. Nye*, 156 Cal. 498.

While it might be said that the language in question, in so far as the same is a part of a legislative scheme for the spending of money appropriated, "pertains to" or "relates to" an appropriation, it can hardly be contended that such language is a distinct item of appropriation of money or an "item" in a bill making an appropriation of money.

Upon the question as to what amounts to an item of an appropriation, it has been declared generally that, in construing the constitutional provision giving the Governor power to disapprove any item or items of any appropriation bill embracing distinct items, the word "items" means "the particulars, the details, the distinct and severable parts" of the appropriation. *Commonwealth, ex rel. Elkins v. Barnett*, 109 Pa. 161; 35 A. L. R. 602.

In *State, ex rel. Teachers & Officers v. Holder*, *supra*, the court declared:

"And after all, and despite the pragmatic utterances of political doctrinaires, the executive, in every republican form of government, has only a qualified and destructive legislative function, and never creative legislative power. If the governor may select, dissent, and dissever, where is the limit of his right? Must it be a sentence, or a clause, or a word? Must it be a section, or

any part of a section, that may meet with executive disapprobation? May the governor transform a conditional or a contingent appropriation into an absolute one, in disregard and defiance of the legislative will? That would be the enactment of law by executive authority without the concurrence of the legislative will, and in the face of it. \* \* \* To allow a single bill, entire, inseparable, relating to one thing, containing several provisions, all complementary of each other, and constituting one whole, to be picked to pieces, and some of the pieces approved, ad others vetoed, is to divide the indivisible; to make one of several; to distort and pervert legislative action, and, by veto, make a two-thirds vote necessary to preserve what a majority passed—allowable as to the entire bill, but inapplicable to a unit composed of divers complementary parts, the whole passed because of each. The bill in question is an entire thing, inseparable in its provisions, and to be approved or disapproved as such, and, not having been signed as a whole, was not made law by the partial and qualified approval which it received."

Since the language about which you inquire is not a distinct and severable item in the bill, its deletion therefrom would modify and change the effect thereof and result in legislation by the executive branch of the government and not by the General Assembly in which body the legislative power of the state is vested by the Constitution.

In the light of the above, you are therefore advised that it is my opinion the term "in excess of Two Hundred Forty Dollars," as the same appears in the salary and wage adjustment provisions of Amended House Bill No. 484 of the 96th General Assembly, is inseparable from such provisions and that under the power conferred upon you by the Constitution of Ohio to disapprove any bill passed by the General Assembly or any item in an appropriation bill, you are without authority to vote the same, and any attempt to do so would be a nullity.

Respectfully,

HUGH S. JENKINS

Attorney General.