

OPINION NO. 76-052

Syllabus:

1. Amended Substitute Senate Bill 170 as enacted by the 111th General Assembly became effective in its entirety, including those provisions ineffectively vetoed by the Governor, on November 28, 1975, ninety days after being filed with the Secretary of State.

2. The provisions of Section 4 of Amended Substitute Senate Bill 170 require a recalculation by the Department of Education of the school foundation formula for each school district. This recalculation should be for the entire period which will have elapsed since July 1, 1975, and the recalculation is to take into account all provisions of the Act, including those ineffectively vetoed.

To: Martin W. Essex, Supt. of Public Instruction, Columbus, Ohio
By: William J. Brown, Attorney General, August 12, 1976

I have before me your request for my opinion, which reads as follows:

"The Supreme Court of the State of Ohio rendered a decision on July 14, 1976, in the case of Akron Education Association v. Martin Essex involving authority to item veto certain portions of Am. Sub. S.B. 170.

"Your opinion is respectfully requested regarding the words 'is now effective in its entirety' as used in the second last and fourth last paragraph of the decision. Specifically, do the provisions of Section 4 of Am. Sub. S.B. 170 require the recalculation of the school foundation formula to include all provisions of the Act, including the items previously vetoed by the Governor, or is the decision applicable only from July 14 forward?"

The first issue raised by your request is what is the effective date of the portions of Amended Substitute Senate Bill 170 which were vetoed by the Governor. To arrive at a conclusion regarding this issue, certain applicable facts must be considered.

Amended Substitute Senate Bill 170 was passed by the General Assembly on August 1, 1975. The Bill was transmitted to the Governor who, on August 29, 1975, purporting to act under the provisions of Article II, Section 16 of the Ohio Constitution, vetoed seven portions of the Bill. On the same date, the Governor transmitted his objections to the Clerk of the Senate, signed the Bill (with the vetoed portions so indicated), and delivered the Bill to the Secretary of State. The Secretary of State received the Bill and filed it indicating thereon an effective date of August 29, 1975.

On September 23, 1975 an original action in mandamus was instituted in the Ohio Supreme Court challenging the validity of the item vetoes of the seven portions of Amended Substitute Senate Bill 170. In a decision rendered on July 14, 1976, the Supreme Court ruled that Amended Substitute Senate Bill 170 was not an appropriation act and that therefore the Governor's exercise of the line item veto power conferred upon him by Article II, Section 16 of the Ohio Constitution was unauthorized. See, State, ex rel. Akron Education Association v. Essex, 47 Ohio St. 2d 47 (1976).

In attempting to ascertain the effective date of the portions of Amended Substitute Senate Bill 170 which were vetoed by the Governor, three possibilities exist: August 29, 1975, the effective date indicated on the Bill; November 28, 1975, 90 days after the date of filing of the Bill with the Secretary of State; and July 14, 1976, the date of the Supreme Court decision invalidating the line item vetoes. For the reasons stated below, it is my opinion that all of the provisions of Amended Substitute Senate Bill 170, including those portions purportedly vetoed, were effective on November 28, 1975.

The language of the Supreme Court decision in State, ex rel. Akron Education Association v. Essex, supra, supports this conclusion. At page 50, the Court states as follows:

"Accordingly, since Am. Sub. S.B. 170 is not an appropriation bill, the Governor's exercise of the item veto power conferred upon him by Section

16, Article II of the Ohio Constitution, under the facts of this case, is unauthorized by law, and is hereby declared to be null and void." (Emphasis added.)

At page 51 of its opinion, the Supreme Court states that "Am. Sub. S.B. No. 170 . . . therefore is now effective in its entirety." (Emphasis added.) The use of this language indicates that the Court concluded that the actions of the Governor in attempting to line item veto portions of Amended Substitute Senate Bill 170 were void ab initio and that, therefore, the Bill was effective in its entirety as it would have been absent the Governor's actions.

This reasoning is given further support by an analysis of the language of Article II, Section 16 of the Ohio Constitution. The pertinent portions of that constitutional provision read as follows:

"If a bill is not returned by the governor within ten days, Sundays excepted, after being presented to him, it becomes law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; . . . The governor shall file with the secretary of state every bill not returned by him to the house of origin that becomes law without his signature."

Under the language of this provision it is apparent that under the facts as stated above, no action was required by the Governor for Amended Substitute Senate Bill 170 to have become effective on November 28, 1975. (The exception of adjournment by the General Assembly is not relevant here.) The Ohio Supreme Court in the Akron case, supra, concluded that the actions of the Governor were void as unauthorized by the Constitution so that the Bill became effective in the ordinary course in conformity with the provisions of Section 16 of Article II of the Ohio Constitution. The Bill in its entirety thus became effective within the time specified by Article II, Section 1c of the Ohio Constitution, 90 days from the date of filing with the Secretary of State which was November 28, 1975. See State of Ohio v. Lathrop, 93 Ohio St. 79 (1915); Heuck v. The State, ex rel. Mack, 127 Ohio St. 247 (1933).

I am aware of no Ohio authorities which have considered the issue of the effective date of a measure purportedly vetoed when the veto is subsequently held to be invalid. However, case authorities from other jurisdictions would support the reasoning and the conclusions stated above. In Porter v. Hughes, 32 P. 165 (Arizona 1893) the Arizona Supreme Court determined that the governor had no authority under the constitution to item veto a certain legislative enactment. The Court, therefore, held that since no constitutional authority to veto existed, the item vetoed became law at the same time as did the remainder of the bill.

In State, ex rel. Finnegan v. Dammann, 264 N.W. 622 (Wisconsin, 1936) the Court considered the effect of a governor's partial veto, which was determined to be invalid. The Court resolved that issue in the following language:

"Both sound principle and the decisions bearing upon the question establish whether or not an invalid

partial veto results in an act being in force or wholly inoperative, depends entirely on whether the act could become a law without the Governor's sanction and approval, or whether it required his approval before it could become law. In the former case the partial veto being ineffective as a veto and no approval being required, the law is in force."

Finally, the Supreme Court of Connecticut considered this issue in a case entitled Caldwell v. Meskill, 320 A. 2d 788 (1973). That Court held that where the governor's item veto was determined to be unconstitutional and therefore of no effect, the entire enactment became law at the end of the constitutionally prescribed period of time, regardless of the attempted veto.

Therefore, based on a logical reading of Article II, Section 16 of the Ohio Constitution; the language of the decision of the Ohio Supreme Court in State, ex rel. Akron Education Association v. Essex, supra; and the authorities from other jurisdictions discussed; it is my conclusion that Amended Substitute Senate Bill 170, in its entirety, became effective November 28, 1975, 90 days after filing with the Secretary of State.

The second issue raised by your request is whether the provisions of Section 4 of Amended Substitute Senate Bill 170 require a recalculation of the school foundation formula to include all provisions of the Act, including the portions vetoed by the Governor, or whether the decision is applicable only from July 14, 1976 forward (that being the date of the Ohio Supreme Court's decision).

Section 4 of Amended Substitute Senate Bill 170 reads as follows:

"Within 30 days of the effective date of this section, the Department of Education shall determine for each school district, the difference between the amounts paid to it during the current fiscal year under Chapter 3317. of the Revised Code as such chapter was in effect on July 1, 1975 and the amounts that would have been paid to it by such date had sections 1 and 2 of this act been in effect on July 1, 1975. The difference shall be paid to the district on or before December 31, 1975 from the moneys appropriated to make the payments required by such chapter to the public schools."

Your second inquiry thus asks, in essence, how this section is to be interpreted under the facts as stated above.

It is apparent that the Department of Education cannot comply with all of the literal language of Section 4, since the deadlines specified therein have passed. Moreover, the phrase "current fiscal year" requires some analysis, since it is now fiscal year 1977, whereas the Act became effective during fiscal year 1976.

It is a general rule of statutory construction that words are to be given their natural and normal meaning. R.C. 1.42. However, due to the unusual events concerning this statute, compliance with the literal language of the statute is impossible. Therefore, one must look to the intention of the legislation, and construe

the statutory provisions so as to effectuate such intention, if possible. R.C. 1.47 and R.C. 1.49.

The language of Section 4 indicates rather clearly the intent of the legislation. The legislature enacted Amended Substitute Senate Bill 170 on August 1, 1975. Therefore, the legislature had to assume that the Act would become effective in fiscal year 1976. This being so, the language of Section 4 required the Department of Education to calculate the difference between the amount paid to each school district for fiscal year 1976, up to the date the calculation was made (under the then existing provisions of R.C. Chapter 3317.) and the amount the school district would have received by that date had Sections 1 and 2 been in effect on July 1, 1975. That amount was to have been paid to each school district by December 31, 1975. For those payments to be received after the date of the calculation, each school district would receive an amount prescribed by Amended Substitute Senate Bill 170. The intended result would thus have been accomplished. Each school district would have been paid an amount for fiscal years 1976 and 1977 as if Amended Substitute Senate Bill 170 had become effective on July 1, 1975.

Only because of the Governor's purported vetoes of portions of Sections 1 and 2, which vetoes were later invalidated, has this result not been achieved. However, the same result will be achieved if Section 4 can be enforced in a manner so as to accomplish this clear legislative intent. This can be accomplished by the Department of Education making the calculations required by Section 4, and by making the payments specified therein. In accordance with the statutory purpose described, the calculations and payments should be for the period from July 1, 1975 to the date of the calculation. This will perform the legislative objective of having each school district receive the amount it would have received had Sections 1 and 2 of Amended Substitute Senate Bill 170 become effective July 1, 1975. Of course, all future calculations and payments will be made in accordance with the provisions of Amended Substitute Senate Bill 170.

It is therefore my opinion and you are so advised that:

1. Amended Substitute Senate Bill 170 as enacted by the 111th General Assembly became effective in its entirety, including those provisions ineffectively vetoed by the Governor, on November 28, 1975, ninety days after being filed with the Secretary of State.

2. The provisions of Section 4 of Amended Substitute Senate Bill 170 require a recalculation by the Department of Education of the school foundation formula for each school district. This recalculation should be for the entire period which will have elapsed since July 1, 1975, and the recalculation is to take into account all provisions of the Act, including those ineffectively vetoed.