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OPINION RELATING TO "ITEM" DISAPPROVALS BY GOVERNOR, MICHAEL V. DiSALLE ON BILLS SUBMITTED BY THE LEGISLATURE—OPINION NO. 1467, OAG FOR 1927, PAGE 2667—SECTION 16, ARTICLE II, OHIO CONSTITUTION AM. SUB. H. B. NO. 390 OF 104TH G. A. HOUSE BILL 831.

SYLLABUS:

1. The word "item" as used in Section 16 of Article II, Ohio Constitution, includes any distinct and severable detail of an appropriation bill. Opinion No. 1467, Opinions of the Attorney General for 1927, page 2667, approved and followed.

2. Under the provisions of Section 16 of Article II, Ohio Constitution, where the Legislature passes a bill making an appropriation of money and designates an amount of money for the first year of a biennium and an amount for the second year of the biennium, for a certain purpose, the amount designated for the second year is an "item" which may be disapproved by the Governor in the manner prescribed in that section.

3. Where language which is a distinct and severable part of the bill appears in a bill making an appropriation of money, such language is an "item" within the purview of Section 16 of Article II, Ohio Constitution, and may be disapproved by the Governor in the manner prescribed by that section, even though the language concerned is not related to a specific appropriation and, in fact, states a general provision of law.

4. Where the expenditure of funds appropriated for a certain purpose in a bill making an appropriation of money is conditioned on compliance with requirements written into the bill, the language stating such requirements is not a distinct and severable part of the bill, and is, therefore, not an "item" which may be disapproved by the Governor under Section 16 of Article II, Ohio Constitution.

5. The following disapprovals of items appearing in Amended Substitute House Bill No. 390 of the 104th General Assembly, made by the Governor on July 9, 1961 and appearing on pages 13 to 18, inclusive of the House Journal of July 13, 1961, are validly before the House for reconsideration under Section 16 of Article II, Ohio Constitution:

(1) The item referring to reappropriation of unexpended balances appropriated to the Senate and House by House Bill No. 831. (Page 85 of the enrolled bill—page 12 of said Journal.)

(2) The item appropriating \$20,000 for each year of the biennium for a Legislative Auditor. (Page 2 of the enrolled bill—page 13 of said Journal.)

(3) The item appropriating \$95,000 to provide for the movement of the Alfred Kelley Home to Franklin Park in Columbus. (Page 24 of the enrolled bill—page 14 of said Journal.)

(4) The item pertaining to the duties of the Director of Health. (Page 29 of the enrolled bill—page 14 of said Journal.)

(5) The item appropriating the balance in the State Park Rotary Fund and stipulating how some of such balance shall be expended. (Page 53 of the enrolled bill—page 15 of said Journal.)

(6) Each item of the bill appearing in the column 1962-1963. (Pages 16, 17, and 18 of said Journal.)

6. The disapproval by the Governor of language conditioning the expenditure of appropriated funds for the purchase of any motor vehicle on requirements provided in said language, the language appearing at page 84 of the enrolled bill and at pages 15 and 16 of said Journal, is not validly before the House for reconsideration under Section 16 of Article II, Ohio Constitution.

7. The disapprovals of items in the column 1962-1963 of Amended Substitute House Bill No. 390, made by the Governor on July 9, 1961, were separate item disapprovals, and may not be reconsidered by the House as one disapproval; and if the House determines to reconsider any or all of such items, each must be reconsidered separately.

8. Whether the House should reconsider any or all of such disapprovals, and the order of reconsideration, is at the discretion of the House.

Columbus, Ohio, July 28, 1961

The Honorable Roger Cloud
Speaker, Ohio House of Representatives
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion asks the following:

“(1) Are all the separate item subjects listed in the general message from Governor DiSalle as to his partial objections to Am. Sub. House Bill No. 390 (as shown on pages 11 through 18 in the House Journal of Thursday, July 13, 1961) validly before the Ohio House of Representatives for its consideration?”

“(2) Are there objections contained in Governor DiSalle’s message which might be construed as language objections only, and, if so, are these objections authorized within the constitutional veto powers of a governor?”

“(3) If there are items of objection by the Governor which are held to be before the Ohio House of Representatives in valid fashion, is reconsideration of them required to be accomplished by separate action on each item? How shall a determination be made as to what are separate items in this particular message of objections?”

Your questions are submitted in accord with House Resolution No. 212, which reads in part:

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“Therefore Be It Resolved, That the Ohio House of Representatives authorizes the Speaker of the House to direct questions to the Attorney General of Ohio, asking for such formal opinions as might serve to clarify any vague or obtuse circumstances occasioned by the submission of the message.”

(See House Journal, July 12, 1961, page 7.)

Section 16 of Article II, Ohio Constitution, pertaining to the veto powers of the Governor, reads, in part, as follows:

“* * * 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, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage.* If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor, except that in no case shall a bill be repassed by a smaller vote than is required by the constitution on its original passage. In all such cases the vote of each house shall be determined by yeas and nays and the names of the members voting for and against the bill shall be entered upon the journal. If a bill shall not be returned by the governor within

ten days, Sundays excepted, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the secretary of state. *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.*" (Emphasis added)

Under the above provision, the Governor is authorized to disapprove any item or items in any bill making an appropriation of money. The general question here presented is whether the Governor's action on Amended Substitute House Bill No. 390, which is a bill making appropriations of money, is within that authority. In determining such question, the definition of the words "item or items," as so used, assumes primary importance.

In Webster's New International Dictionary, Second Edition, page 1320, the word "item" is defined as:

"An article, a separate particular in an enumeration; account, or total; or detail; as the items in a bill."

In Corpus Juris Secundum, Volume 48, page 787, the same word is defined as:

"Anything which can form part of a detail; an article; a circumstance; a driblet, a part; a separate entry in an account or a schedule; a separate particular in an account; a separate particular in an enumeration of a total which is separate and distinct from the other particulars or entries; a single detail of any kind; a single entry; a single item of an account; a thing in the aggregate composed of several single things; the details; the distinct and severable parts; the particulars; the particulars of an account."

In 35 A.L.R. 602, the word "item" as applying to appropriation acts, is discussed as follows:

"Upon the question as to what amounts to an item of an appropriation, it has been declared generally that, in construing a 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. Com. ex rel, Elkin v. Barnett (1901) 199 Pa. 161, 55 A.L.R. 882, 48 Atl.

976. The court considered that while ordinary bills have a single subject as a unit, which admits of approval or disapproval as a whole, without serious inconvenience, even though some of the details may not be acceptable, a different situation exists as to an appropriation bill, inasmuch as the latter necessarily presents two considerations almost equally material, namely, the subject and the amount; and that the intent of the Constitution was to give the governor the same control, by disapproval, as that which the legislature possessed, over each subject and each amount.

“In *Callaghan v. Boyce* (1915) 17 Ariz. 433, 153 Pac. 773, the court said that ‘item,’ as used in the constitutional provision that if a bill contain several items of appropriation the governor may object to one or more of such items, while approving the rest of the bill, is used synonymously with ‘subject’ and ‘distinct or separate part,’ and that a disapproval by the governor of an item, or several items, of appropriation, has reference to the distinct subject or part for which the appropriation is made, and all its incidents.”

In Opinion No. 1467, Opinions of the Attorney General for 1927, page 2667, one of my predecessors, in considering the word “item” as used in Section 16 of Article II, *supra*, said at page 2674:

“I see no reason to assume that the word ‘item’ was used in Section 16, *supra*, in any different meaning than is generally and commonly used, and that, as therein used, it means a separate particular, that is a distinct and severable detail, in an appropriation bill.”

On reviewing the various definitions of the word “item” I find that I am in accord with the definition used by my predecessor in Opinion No. 1467, *supra*, and conclude that any distinct and severable detail of an appropriation bill is an item in the bill within the purview of Section 16, *supra*.

To consider the first question raised by the request for Opinion I will, for convenience, take in order each of the disapprovals of the Governor as noted in the STATEMENT OF REASONS FOR THE DISAPPROVAL OF CERTAIN ITEMS IN AMENDED SUBSTITUTE HOUSE BILL NO. 390, which Statement was sent to the House by the Governor and spread on the House Journal of July 13, 1961, at pages 13 to 18, inclusive.

1

The first disapproval contained in the Statement appears at page 12 of said Journal, as follows :

“I herewith return as disapproved, Section 22 of the appropriation act. This item is found on Page 85 of the enrolled bill and at Line 4967 of the engrossed bill.

“My reason for disapproval is that this is an attempt to show preference to one branch of the government at a time when this branch is claiming the State’s inability to meet its responsibilities to the aged, the mentally ill, and the juvenile delinquent.

“The language of Section 22 is as follows :

“SECTION 22. All unexpended balances appropriated to the Senate and House of Representatives in House Bill No. 831 are hereby reappropriated, subject to release thereof by the Controlling Board.”

“No amount is indicated but the unexpended balances total \$455,322.80.”

After the above-noted language, a further explanation is given as to the reason for disapproval.

The pertinent part of the enrolled bill (page 85) shows the above-noted language with a line drawn through it. In the right margin, words are written in as follows :

“Disapproved

“Michael V. DiSalle

“7/9/61”

I have no doubt that the language here involved is a distinct and severable detail of the appropriation bill. Under said language, whatever balance is left for the House and Senate from the 1959-61, biennium, would be reappropriated for the 1961-62, 1962-63 biennium. Such language certainly stands as a separate particular of the bill, and is, therefore, an item in a bill making an appropriation. Since the Governor has clearly indicated to the House of Representatives his disapproval of the item, I conclude that said item is properly before the House for its consideration under Section 16 of Article II, *supra*.

The second disapproval contained in the Statement appears at page 13 of said Journal, and reads :

“I herewith return as disapproved, the item appearing on Page 2 of the enrolled bill and beginning on Line 69 of the engrossed bill under ‘Special Purposes’ entitled, ‘Legislative Auditor’ \$20,000 for the first year of the biennium and \$20,000 for the second year of the biennium for a total of \$40,000.

“The language of the item is as follows :

“ ‘The foregoing appropriation for special purposes shall be expended for the functions and activities of the Legislative Auditor of the Legislative Service Commission. The Legislative Auditor shall report quarterly beginning in October, 1962 to the members of the General Assembly and the Legislative Service Commission on the status of state revenues and expenditures; program changes for any state department or agency affecting the level of state government expenditures; transfer of appropriations from one item to another within state departments and agencies; and on any other fiscal or budgetary matters pertaining to the various state departments and agencies. The Legislative Auditor shall prepare, after July 1, 1962, an estimate of expenditures for the 1963-1965 biennium for all state departments and agencies based on the actual expenditures of these departments and agencies for the fiscal year 1961-1962, plus all mandatory increases in programs or other changes in expenditure levels provided for under existing law. The estimate of expenditures shall be submitted to the General Assembly not later than January 15, 1963. The powers and duties described in section 103.18 of the Revised Code shall apply to the functions of the legislative auditor.’ ”

The reasons for disapproval follow the above language.

Page 2 of the enrolled bill shows the following :

| | | |
|----------------------------|--------|--------|
| “Special Purposes | | |
| “Legislative Auditor | 20,000 | 20,000 |

After the above, appears the language above-cited with a line drawn through it. In the right margin, words are written as follows :

“Disapproved
“Michael V. DiSalle
“7/9/61”

Quite clearly, therefore, the Governor has disapproved the appropriation for Legislative Auditor for both years of the biennium. Also, it appears obvious that the part of the bill here involved is distinct and severable from the rest of the bill and is an item in an appropriation bill. Accordingly, I conclude that said item is validly before the House for its consideration under Section 16 of Article II, *supra*.

3

The third disapproval contained in the Statement appears on page 14 of said Journal, and reads:

“I herewith return as disapproved, an item appearing on Page 24 of the enrolled bill and appearing in Lines 1417 through 1421 of the engrossed bill in the amount of \$95,000 to provide for the movement of the Alfred Kelley Home to Franklin Park in Columbus, Ohio.”

The reasons for disapproval are stated after the above language.

The enrolled bill, at page 24, shows an appropriation of \$95,000 to the Ohio Historical Society for the first year of the biennium, for moving the home; the Governor having drawn lines through the language and the amount. In the left margin, words are written as follows:

“Disapproved
“Michael V. DiSalle
“7/9/61”

Again, it appears clear that an item in an appropriation bill is here involved. An appropriation is made for a purpose, both the appropriation and the purpose being separate and apart from the rest of the bill. Since the Governor has clearly expressed his disapproval of the item, I am of the opinion that the disapproval is validly before the House for its consideration under Section 16 of Article II, *supra*.

4

The fourth disapproval contained in the Statement is shown on page 14 of said Journal as follows:

“I herewith return as disapproved, an item appearing on Page 29 of the enrolled bill and at Line 1717 and 1718 of the engrossed bill, being the first item under the Department of Health—General Administration.

“The language is as follows :

“ ‘The director of health shall devote his entire time to the duties of his office, and shall hold no other office or position of profit.’”

After the above language, the reasons for the disapproval are stated.

At page 29 of the enrolled bill, the above language as to the Director of Health appears with a line through it. In the left margin, language is written as follows :

“Disapproved
“Michael V. DiSalle
“7/9/61”

This disapproval differs from those considered earlier in that the language concerned does not make an appropriation while the other subjects of disapproval so do. I do not believe, however, that an appropriation is necessary to constitute an item which may be disapproved by the Governor. Section 16 of Article II, *supra*, states that items “in any bill making an appropriation of money” may be disapproved. Amended Substitute House Bill No. 390, *supra*, is obviously a bill making an appropriation of money. Thus, under the definition previously adopted, if the language concerned is distinct and severable from the remainder of the bill, it is an item in such a bill.

It might be argued that the reference to an item or items in a bill making an appropriation of money refers only to actual items of appropriation. Such an interpretation has been adopted in several cases in other jurisdictions; but the constitutional provisions (or other pertinent provisions of law) in those jurisdictions differ to some extent from the Ohio provision.

For example, in the case of *Bengzon v. Secretary of J. & Insular Auditor*, 299 U. S. 410 (1936) the United States Supreme Court had occasion to consider the veto authority of the then Governor General of the Philippine Islands under a provision reading :

“The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object.”

At page 415, the opinion by Sutherland, J., states :

“So, even if it be conceded that the bill could be characterized as an appropriation bill, section 7 is not an ‘item’ within the meaning of section 19 of the Organic Act. An item of an appropriation bill obviously means an item, which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill.”

It will be noted that the provision considered in the *Bengzon* case, *supra*, referred to “an appropriation bill” while the Ohio provision refers to “any bill making an appropriation of money.” That there is a difference is demonstrated by the case of *State, ex rel, Dickson v. Saiz*, 62 N.M. 227, in which it was held that under a constitutional provision authorizing the governor to approve or disapprove any part or parts, item or items, of any bill appropriating money, the language “any bill appropriating money” is not synonymous with the phrase “general appropriation bill.” Further, in the other jurisdictions above referred to, an appropriation bill must contain only items of appropriation. For example, in Mississippi, the constitution forbids ingrafting legislation on appropriation bills. In Ohio, although the constitutional provision would appear to make the same requirement, such is not true.

Although Section 16 of Article II, Ohio Constitution, states that a bill shall contain only one subject which must be expressed in the title, this requirement has been held to be directory rather than mandatory (*Pim v. Nicholson*, 10 Ohio St., 623). Thus, subjects not germane to the title have been included in appropriation bills in the past, just as the present language has been inserted in Amended Substitute House Bill No. 390. As to this, the title of the bill reads:

“To make general appropriations for the biennium beginning July 1, 1961 and ending June 30, 1963.”

Clearly, the language pertaining to the Director of Health does not make an appropriation and is not related to any appropriation made in the bill.

It will be noted that the bill does not make the expenditure of any funds contingent on the Director of Health meeting the requirements of the language in question. If the bill did so, said language would not be an item, as it would not be distinct and severable. (As will be further explained under “6” later). It is obvious that if this language were removed from the Bill, such removal would not affect any of the remainder of the bill. And there can be no doubt that the language concerned, on its face, constitutes general legislation.

Section 16 of Article II, *supra*, clearly contemplates that the Governor shall have the right to disapprove complete bills and to disapprove items in bills which make appropriations of money. If language such as here concerned were not subject to the disapproval of the Governor as an item veto, this right could be defeated. Any language which the General Assembly wished to pass without being subject to veto could be inserted in a bill making an appropriation. In order to veto such language the Governor would be forced to veto the entire bill even though he might desire to veto only certain items of the bill. I do not believe that this is the intent of said Section 16, and I am of the opinion that any detail of a bill making an appropriation of money, which detail is distinct and severable from the remainder of the bill, is an item in a bill making an appropriation within the purview of Section 16 of Article II, *supra*.

I, therefore, conclude that since the Governor has disapproved the language dealing with the Director of Health, such disapproval is validly before the House for its consideration under Section 16 of Article II, *supra*.

5

The fifth disapproval contained in the Statement appears on page 15 of said Journal and reads:

“In the Department of Natural Resources, Parks, I disapprove of the appropriation made by the following language on Page 53 of the enrolled bill:

“ ‘The balance in the following rotary fund on June 30, 1961 and all receipts accruing thereto, provided that moneys derived from the sale of state lands pursuant to section 1541.081 of the Revised Code and moneys in rotary account E-1 from prior land sales shall be used exclusively for the development of facilities administered by the division of parks located at or adjacent to the lake at which the sales occur, are hereby appropriated for the purposes of the state park rotary fund as set forth in section 1541.22 of the Revised Code.’

“This language set out by quotation marks therefore vetoed.”
After the above language, the reasons for disapproval are set forth.

On page 53 of the enrolled bill, the above-cited language appears with lines crossed through it. Language is written in the right margin as follows:

“Disapproved
“Michael V. DiSalle
“7/9/61”

The language here concerned makes an appropriation of money in a rotary fund and also contains particulars as to how money in said fund are to be expended. This detail of the bill is obviously distinct and severable from the remainder of the bill and is, therefore, an item in an appropriation bill. As the Governor has adequately expressed his disapproval of the item, I conclude that the disapproval is validly before the House for its consideration under Section 16 of Article II, *supra*.

6

The sixth disapproval contained in the Statement appears on pages 15 and 16 of said Journal and reads :

“I herewith return to you as disapproved, the item included in Section 19, appearing on Page 84 of the enrolled bill and being Lines numbered 4931 to 4953, inclusive, in the engrossed bill. The language reads as follows:

“ ‘The expenditure of any funds appropriated herein for the purchase of any motor vehicle, including aircraft, designed to carry passengers, shall be made in accord with regulatory procedures promulgated by the department of finance. Such regulatory procedures shall provide for the economical purchase and the efficient use of motor vehicles, including aircraft.

“Such regulations shall require that no automobile except compact cars built in the United States may be purchased without the prior approval of the controlling board. For the purposes of this section ‘compact car’ means an automobile having a length of not more than 195 inches, and a manufacturer’s suggested retail list price of not more than two thousand dollars for a basic two-door sedan. The department of finance shall include in any such regulations, procedures for the uniform appropriate identification of all motor vehicles used on the highways and purchased with appropriated funds. Such identification shall not be required on motor vehicles used by the state highway patrol, military vehicles, or vehicles used for the enforcement of the liquor control laws.

“Such regulations pertaining to all aircraft, excepting the aircraft of the state highway patrol and adjutant general’s department, shall require the keeping of records of each flight made, names of pilot and passengers, purpose of flight, point of origin and destination in each instance. Once each quarter during the 1961-1963 biennium beginning in October, 1961 a composite record of all such flights shall be submitted by the department of finance to the controlling board.’ ”

After said language, the reasons for the disapproval are set forth.

Beginning on page 84 of the enrolled bill, the above-cited language appears with lines crossed through it. In the right margin, language is written as follows :

“Disapproved
“Michael V. DiSalle
“7/9/61”

It will be noted that the language here in question requires that the expenditure of any funds appropriated by the bill, for the purchase of any motor vehicle, is *contingent* upon compliance with certain regulatory procedures which are set forth in the language concerned. Thus, said language is inextricably linked to other provisions of the bill and can not be considered a distinct and severable part. The removal of said language from the bill would affect the remainder of the bill, as such language constitutes a condition which must be met before certain funds may be expended. Thus, in disapproving this language the Governor would be taking affirmative action rather than the negative action which is allowed under the power of veto.

In the case of *In re Opinion of the Justices*, 294 Mass., 616 2 N.E. 2d, 789 (1936), a somewhat similar situation was considered. The Massachusetts Constitution authorizes the governor to “disapprove or reduce items or parts of items in any bill appropriating money.” The question was whether the governor could disapprove language which placed a condition on an appropriation of funds. The Court said :

“* * * Power is conferred upon the Governor to reduce a sum of money appropriated, or to disapprove the appropriation entirely. No power is conferred to change the terms of an appropriation except by reducing the amount thereof. Words or Phrases are not ‘items or parts of items.’ This principle applies to the condition attached to the appropriation now in question. That condition is not an item or a part of an item.”

Also, in *Commonwealth v. Dodson*, 176 Va. 296, 11 S.E. 2d, 120 (1940) the court considered whether language creating the “Legislative Director of the Budget” could be vetoed by the governor. After first holding that such language was germane to the bill, the court further held that under a constitutional provision declaring that the Governor shall have power to veto any particular item or items of an appropriation bill, an “item” is an “indivisible sum of money dedicated to a stated purpose”

and it is something different from a provision or condition, and where conditions are attached they must be observed. The provision creating the legislative director of the budget was held to be a condition and not an item, which could be vetoed.

In *State, ex rel. Teachers and Officers of Industrial Institute and College v. Holder*, 76 Miss., 158, 23 So. 643 (1898), the bill in question, after appropriating money for a certain college, contained a long proviso conferring certain duties on the president of the college. The governor vetoed the proviso, but not the appropriation. The court held this action unconstitutional, saying :

“If the governor may select, dissent, and dissever, where is the limit of his right? Must it be a section, or any part of a section, that may meet with executive disapprobation? May the governor transform a conditional or contingent appropriation into an absolute one, in disregard and defiance of the legislative will?”

And in the case of *Fulmore v. Lane*, 104 Tex. 499, the court said :

“Nowhere in the Constitution is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is that given to object to an item or items where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, *or to language qualifying an appropriation or directing the method of its uses*, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, *or language qualifying an appropriation*, or directing the method of its use, becomes noneffective.” (Emphasis added)

In view of the foregoing, therefore, I conclude that the language noted above, as to the purchase of any motor vehicle, is not subject to disapproval by the Governor as an item under Section 16 of Article II, *supra*, and is, therefore, not validly before the House for its consideration under that constitutional provision.

To this point I have treated six separate disapprovals. Still to consider is the disapproval (or disapprovals) of all second year (1962-63) appropriations. The Governor has evinced this disapproval by crossing out all

amounts appropriated for the fiscal year 1962-63 and by writing opposite these amounts the words :

“Disapproved
 “Michael V. DiSalle
 “7/9/61”

Further, in the right margin of the last page of the bill the following words appear :

“It is my intention to disapprove all appropriations in the fiscal year 1962-1963. I believe that the General Assembly for the purpose of the consideration of this veto may act on the fiscal year 1962-1963 as one item. All appropriations for fiscal year 1962-1963 in all funds and for all accounts are hereby disapproved.

Michael V. DiSalle
 Governor of Ohio
 July 9, 1961”

Also, the disapproval of all second year appropriations is noted in the Statement in said Journal at pages 16, 17, and 18, as follows :

“I have by the several item vetoes disapproved all dollar appropriations for the fiscal year 1962-1963, the second fiscal year of the biennium.

“The reasons for these several item vetoes may be stated together :

“1. *In reviewing the appropriation bill passed by the Legislature, I am greatly concerned that many vital programs of our State would be inadequately supported.* In January, I submitted to the General Assembly a plan which would have maintained essential programs with reasonable expectations of available revenue. The majority Party in the General Assembly has seen fit to make such changes as to make the appropriations bill far less fiscally sound and lacking in human considerations.

“I fear that the bill before me represents a confession of failure by the Majority Party in the General Assembly — a failure to live up to campaign promises based on false charges and leading to bitterness and frustrations and irresponsible actions.

“2. *There is danger that the actions taken and those in contemplation by the Majority in the General Assembly will place the state government in a position of spending more than the revenue system will support.* On the one hand actions have

been taken which act to reduce the revenue potential of the state. On the other hand certain spending proposals have been or are being yet promoted — as Majority Party policy.

“3. *The reductions in certain critical areas such as mental hygiene, aid for the aged, aid for the disabled, aid for the dependent child, poor relief, higher education, juvenile training, and others, if taken literally would mean that such programs are to be cut back in the face of a position which is far from high in the nation and in face of growing numbers to be served.* While the leadership of the General Assembly has not made this specific in their statements it is in my opinion clear that such must be the case if these programs were to remain within the amounts appropriated. While the balanced budget proposal presented by me to the General Assembly in January contained growth elements which were modest compared to actions taken by the 101st and 102nd General Assemblies, it did seek to maintain existing programs in a manner which would care for the basic requirements of critical programs for the two years ahead. The bill before me does not do this.

“In certain critical areas, therefore, I would propose that as we enter fiscal 1961-1962 to continue these programs with the cooperation of the state Controlling Board by transferring second, third, and fourth quarter monies in such a way as to meet costs necessary to the continuation of these programs. By the terms of the appropriations bill an affirmative vote of four out of five members of the board is necessary for any action. The Majority Party is to have two members on the board representing the General Assembly and one other member of the board is of the same party. Thus the Majority Party in the General Assembly not only will be adequately represented but will in fact be able to determine whether such monies are to be made available.

“4. *If the General Assembly adjourns, I would propose to issue a special call for their return to consider and act upon appropriations for fiscal 1962-1963.* This call would be issued sometime after the first of the year. If the Assembly recesses, as has been discussed recently, a special call would not be necessary and this would also provide an opportunity for numerous other important matters to be given consideration and to be acted upon. It now appears, that time will prevent action on Sunday Blue Laws, lobbying conflict of interest, criminal conspiracy, campaign expenditures, congressional redistricting, and many others.

“Faced with the actions thus far taken which would inadequately provide for certain needs of the people of Ohio and other actions which at the same time may very well bring forth a critical fiscal situation, it is found to be in the best interest of the state to disapprove the several dollar appropriations for the

1962-1963 fiscal year, thereby providing for a fiscal session of the General Assembly next year.

“Annual sessions for budgetary purposes have been discussed in Ohio over a number of years and this practice has been adopted by a number of other states. A session next year will allow much of the heat of the present session to have died and will provide the fiscal experience for several months of the first fiscal year as useful information for considering the appropriate action for the remaining portion of the biennium.

“A session devoted exclusively to budgetary matters would be beneficial to all of Ohio. It would permit concentration by legislators, citizens, newspapers, television and radio, to the fiscal problems of a growing state. It would prevent the diversion resulting from the multitude of issues usually facing the General Assembly. It would permit legislators, not members of the finance committees, to devote time to the financial implications of state government. This intensive study and review has long been a need in the State of Ohio where too often the importance of budgetary measures has been lost in the smoke and din of the battle over more colorful issues. It will serve to better inform the citizens of Ohio who too often are called to foot the bill for government without having a clear picture of what they are paying for. It will serve to produce a clearer picture of what is truth in the conflict of charges and counter charges. This will in turn result in a better exercise of our democratic prerogatives.

“For these reasons, I have disapproved the several dollar appropriations for fiscal 1962-1963 as indicated by the several items vetoed.

MICHAEL V. DiSALLE

July 9, 1961

Governor

To further clarify the questions here presented it appears advisable to look at the form of Amended Substitute House bill No. 390, here under consideration. This bill, as marked by the Governor, reads in part as follows:

“SECTION 1. There is hereby appropriated out of any moneys in the state treasury to the credit of the general fund and not otherwise appropriated the sums set forth in this section for the purposes so designated.

“Except as provided in section 14 of this act and the Special Purposes item for ‘Public Employees Retirement System Contribution’ to the Public Utilities Commission of Ohio — Administration, the sums herein named in the column designated 1961-1962 shall not be expended to pay liabilities or deficiencies existing

prior to July 1, 1961 nor to pay liabilities incurred subsequent to June 30, 1962, those named in the column designated 1962-1963 shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1962 or incurred subsequent to June 30, 1963.

“THE JUDICIARY

| | 1961-1962 | 1962-1963 | Biennium Disapproved |
|------------------------|-------------|-------------|-------------------------|
| Operating Expenses | | | |
| Personal Service | \$2,316,000 | \$2,380,998 | Michael V. DiSalle |
| Maintenance | 15,000 | 15,000 | 7/9/61 |
| TOTAL THE JUDICIARY | \$2,331,000 | \$2,335,898 | \$4,726,998 |

“THE SUPREME COURT OF OHIO

| | | | |
|--------------------------------------|-----------|-----------|--------------------|
| Operating Expenses | | | |
| Personal Service | \$218,680 | \$218,680 | Disapproved |
| Maintenance | 30,000 | 25,000 | Michael V. DiSalle |
| Equipment | 50,000 | 29,000 | 7/9/61 |
| TOTAL SUPREME COURT OF OHIO | \$298,680 | \$272,680 | \$571,360 |
| “* * * | * * * | * * * | “* * *” |

The method used by the Governor to disapprove the second year appropriations to the Judiciary and Supreme Court of Ohio is followed throughout the bill in the appropriations for other purposes.

Again, the question presented is whether the disapproval by the Governor is a disapproval of “an item or items” in the bill, within the purview of the constitutional provision. A further question herein raised is, if a valid disapproval was made, was it done: (1) by separate disapproval of separate items; or was it done (2) by one disapproval of one item, or one disapproval of several items.

I believe it is clear that second year appropriations for certain purposes may be separately disapproved. In this regard, it will be noted that, under the bill, sums named in the column 1962-1963 may be used only to pay liabilities or deficiencies incurred during the period July 1, 1962 to June 30, 1963, while sums in the column 1961-1962 may be used only to pay liabilities or deficiencies incurred during the period July 1, 1961 to June 30, 1962. Thus, it follows that each column contains a separate and distinct appropriation for the purpose included, and I believe that the appropriation in either column for the purpose noted may be considered an “item” in the bill within the definition of “item” previously set forth.

In Opinion No. 1467, Opinions of the Attorney General for 1927, page 2667, the then Attorney General had occasion to consider the question of what is an item in an appropriation bill. In that case, the bill in question made an appropriation as follows :

| | Six months | Year | Eighteen months |
|--|------------|------------|-----------------|
| “Personal service — | | | |
| * * * | * * * | | * * * |
| “A-3 Unclassified—Reporting and transcribing testimony | | \$3,000.00 | \$6,000.00” |

In discussing whether each of the above amounts was a separate item, my predecessor adopted the definition of “item” which I have set forth earlier, and said at page 2679 :

“For the reasons above set forth, it is my opinion that the appropriation of \$3,000 in the column designated ‘Six Months’ is an item within the meaning of Section 16, Article II of the Constitution of Ohio, and that the appropriation of \$6,000 in the column headed ‘Year’ is a separate item within the meaning of the same constitutional provision.”

In arriving at his conclusion, my predecessor cited the case of *Fulmore v. Lane*, 104 Tex. 499; 140 S.W. 405, which held that where a certain amount of money is appropriated for each of two years, each year’s appropriation may be treated as a separate item in the bill.

The question as to whether an entire year’s appropriation for all purposes may be considered an “item” which can be disapproved by one veto has, to my knowledge, never been decided in this or any other state. Under the general definition of “item” as adopted and used in this opinion, it might well be said that the entire second year appropriation is distinct and severable, and, therefore, an “item.” On the other hand, there is a question as to whether such a disapproval would be within the intent of the provision allowing disapprovals of items. As to the object of such a provision, it is stated in the *Bengzon* case, *supra*, by Sutherland, J. (Supreme Court of the United States), at page 415 :

“Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called ‘log-rolling’ — by which, in order to

secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.”

It would appear that under Justice Sutherland’s language the validity of a single veto of an entire year’s appropriation would be, at least, open to question. Recognizing, of course that the Governor always has the power to disapprove an entire bill if he so desires.

As to the question of one disapproval of several items, the language of Section 16 of Article II, *supra*, might be read to make such a disapproval valid, since said language grants authority to “disapprove any item or items in any bill making an appropriation of money.” In this regard, although the language allows the disapproval of “items,” it does not specifically require that there be a separate disapproval for each item. Again, however, the question whether such a disapproval would be within the object of the constitutional provision, as discussed above, would be open to question.

In summary, I have here determined that “items” in the second year may be disapproved by separate disapprovals. And while I have not stated my opinion as to the validity of the disapproval of the entire second year by one veto, I do not deem it necessary for the purposes of this opinion to rule on this question for the reason that the Governor did not act by a single veto but by several individual vetoes; and I believe that question should be determined on the method actually employed.

As noted above, the disapproval of the second year appropriations was done in two ways: by crossing out the amount in each line of the bill; and by the language written on the last page of the bill by the Governor that “It is my intention to disapprove all appropriations for the fiscal year 1962-1963.”

It will be further noted that in the Statement, as appearing on page 16 of the Journal, reference is made to the disapprovals marked on the enrolled bill as follows:

“I have by the *several item vetoes* disapproved all dollar appropriations for the fiscal year 1962-1963, the second fiscal year of the biennium.

“The reasons for these *several item vetoes* may be stated together:

* * *

* * *

* * *

(Emphasis added)

I do not believe it can be said that the items in question were disapproved in two ways, although there is some evidence that this was attempted. In determining the method used, certain facts stand out as follows :

1. Each item in the second year column was specifically crossed out.
2. Next to each such item, the word "Disapproved" was written.
3. In his Statement, the Geovernor said that he had made "several item vetoes" and referred to the "reasons for these several item vetoes."

While the Governor's opinion, as written on the last page of the enrolled bill, is that the second year appropriation was a single veto, such opinion cannot, of course, lend authority which is not contained in the requirements of the constitution ; and his specific actions, as noted above, lead me to the conclusion that he made separate and distinct disapprovals of each item in the second year.

I am further of the opinion that the method used in making such disapprovals was proper under Section 16 of Article II, *supra*. That section states that when the Governor disapproves a bill "he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage." Under this provision, therefore, it is mandatory that the Governor give his objections in writing when disapproving a bill. (See 119 A.L.R. 1190, citing *State, ex rel. Boynton v. French* (1931) 133 Kan., 579; *Arnett v. Meredith*, 121 S.W. 2d, 36; *Lowell v. Dadman* (1906) 191 Mass. 370, 77 N.E. 717; *Truesdale v. Rochester* (1884) 33 Hun (N.Y.) 574.) And while said Section 16 does not specifically require that in disapproving an item the Governor must give his objections in writing, such must be necessarily implied since a disapproved *item* must be repassed in the manner prescribed for the repassage of a bill ; and in the repassage of a bill, when a three-fifths vote is obtained in one house bill is sent, *with the objections of the Governor*, to the other house for reconsideration. *But it is clear that the Governor did state his objections, in writing, in submitting the Statement, supra.*

I am aware that the objections of the Governor appear to be more concerned with causing the Legislature to return for a special session in 1962 to consider the second year budget than they are with the disapproval of each individual item. I can also see that the consideration of these items

individually will take considerable time, and that it may be difficult to apply the objections to many of the items. However, the Governor's objections are directed to the "several item vetoes" and must be applied to them whether or not said objections appear to fit the subject. While the Constitution requires that objections be given in writing, it requires only that the Governor state *his* objections, whatever they be. As it stated in 99 A.L.R., page 1277, in referring to the case of *Cascade Teleph. Co. v. State Tax Commission* (1934) 176 Wash., 616:

"In reply to the suggestion that the governor's veto of the section of the bill must fail because he did not adequately give his reasons therefor, he having stated merely that there was no good reason for the provision, the court in *Cascade Teleph. Co. v. State Tax Commission* (Wash.) *supra*, said that it could see nothing in the wording of the constitutional provision (that 'in such case he shall append to the bill at the time of signing it, a statement of the section . . . to which he objects, and the reasons therefor') which placed any duty upon the governor *logically* to demonstrate his position, or which made the veto good or bad as the governor's reasons might be sound or otherwise, and that 'the giving of a reason by the governor is for the information of the legislature, and when it was told that, in the governor's opinion, the taxpayer should not be required to pass the tax on to the ultimate consumer, it had all of the information necessary.' " (Emphasis added)

Accordingly, in view of the disapprovals noted on the bill, and in view of the language of the Statement, I am constrained to conclude that each amount listed in the second column of the bill is a separate item which has been disapproved separately by the Governor; and I am of the opinion that such disapprovals are validly before the House for its consideration under Section 16 of Article II, *supra*.

Your second question refers to language objections in the Governor's message. I have found two of these; the one pertaining to the Director of Health—"4," above—the other pertaining to the conditions applied to the expenditure of money for the purchase of a motor vehicle—"6," above. As noted above, I have concluded: (1) that language appearing in a bill making an appropriation of money, which language is distinct and severable, may be disapproved as an "item" by the Governor, even though said language does not, itself, contain an appropriation; and (2) that language appearing in a bill making an appropriation, which language constitutes a condition which must be met before funds appropriated by the bill may be expended, is not an "item" which may be disapproved by the Governor.

Under these rules, I have further concluded that the Governor's disapproval of the language pertaining to the Director of Health was valid, and that the disapproval of the language relating to the purchase of a motor vehicle was not valid.

The last question to consider is the method by which the disapprovals of items herein referred to should be put before the House for reconsideration. I have, of course, determined that each of the separate items for the second year has been disapproved; thus, to reconsider these items, each must be taken individually. As to what is an item, I believe that each amount in the second column, which amount appears after a "purpose," is an "item" which may be considered. For example, the first items of the bill appear as follows:

| "THE JUDICIARY | | | |
|-------------------------|-------------|-------------|--------------------|
| | 1961-1962 | 1962-1963 | Biennium |
| "Operating Expenses | | | |
| "Personal Service | \$2,316,000 | \$2,388,998 | Disapproval |
| "Maintenance | 15,000 | 15,880 | Michael V. DiSalle |
| | <hr/> | <hr/> | 7/9/61 |
| "TOTAL THE JUDICIARY | \$2,331,000 | \$2,395,998 | \$4,726,998 |
| * * * | * * * | | * * * |

In my opinion there are two items above that may be reconsidered. The first is "The Judiciary, Operating-Expenses, Personal Service, for the fiscal year 1962-1963, in the amount of \$2,380,998." The second is "The Judiciary, Operating Expenses, Maintenance, for the fiscal year 1962-1963, in the amount of \$15,000." I do not believe that the lines marked "TOTAL" need to be reconsidered as the amount in those lines are merely totals of items, not items.

The above sample may be followed throughout the bill. In some cases, of course, there will be more to consider than "Personal Service" and "Maintenance," as items such as "Equipment," "Special Purposes," "Rotary," and other appear throughout the bill.

The language on page 29 of the enrolled bill, pertaining to the Director of Health, would be treated by placing that language before the House on the question of reconsideration.

I might note in passing that I know of no requirement that all, or any, of the items herein discussed must be placed before the House for reconsideration. That appears to be at the discretion of the House, itself. Fur-

ther, should it be determined that any of such items will be reconsidered, the order of consideration appears to be at the discretion of the House.

In conclusion, therefore, it is my opinion and you are advised :

1. The word "item" as used in Section 16 of Article II, Ohio Constitution, includes any distinct and severable detail of an appropriation bill. Opinion No. 1467, Opinions of the Attorney General for 1927, page 2667, approved and followed.

2. Under the provisions of Section 16 of Article II, Ohio Constitution, where the Legislature passes a bill making an appropriation of money and designates an amount of money for the first year of a biennium and an amount for the second year of the biennium, for a certain purpose, the amount designated for the second year is an "item" which may be disapproved by the Governor in the manner prescribed in that section.

3. Where language which is a distinct and severable part of the bill appears in a bill making an appropriation of money, such language is an "item" within the purview of Section 16 of Article II, Ohio Constitution, and may be disapproved by the Governor in the manner prescribed by that section, even though the language concerned is not related to a specific appropriation and, in fact, states a general provision of law.

4. Where the expenditure of funds appropriated for a certain purpose in a bill making an appropriation of money is conditioned on compliance with requirements written into the bill, the language stating such requirements is not a distinct and severable part of the bill, and is, therefore, not an "item" which may be disapproved by the Governor under Section 16 of Article II, Ohio Constitution.

5. The following disapprovals of items appearing in Amended Substitute House Bill No. 390 of the 104th General Assembly, made by the Governor on July 9, 1961 and appearing on pages 13 to 18, inclusive of the House Journal of July 13, 1961, are validly before the House for reconsideration under Section 16 of Article II, Ohio Constitution :

(1) The item referring to reappropriation of unexpended balances appropriated to the Senate and House by House Bill No. 831. (Page 85 of the enrolled bill—page 12 of said Journal.)

(2) The item appropriating \$20,000 for each year of the biennium for a Legislative Auditor. (Page 2 of the enrolled bill—page 13 of said Journal.)

(3) The item appropriating \$95,000 to provide for the movement of the Alfred Kelley Home to Franklin Park in Columbus. (Page 24 of the enrolled bill—page 14 of said Journal.)

(4) The item pertaining to the duties of the Director of Health, (Page 29 of the enrolled bill—page 14 of said Journal.)

(5) The item appropriating the balance in the State Park Rotary Fund and stipulating how some of such balance shall be expended. (Page 53 of the enrolled bill—page 15 of said Journal.)

(6) Each item of the bill appearing in the column 1962-1963. (Pages 16, 17, and 18 of said Journal.)

6. The disapproval by the Governor of language conditioning the expenditure of appropriated funds for the purchase of any motor vehicle on requirements provided in said language, the language appearing at page 84 of the enrolled bill and at pages 15 and 16 of said Journal, is not validly before the House for reconsideration under Section 16 of Article II, Ohio Constitution.

7. The disapprovals of items in the column 1962-1963 of Amended Substitute House Bill No. 390, made by the Governor on July 9, 1961, were separate item disapprovals, and may not be reconsidered by the House as one disapproval; and if the House determines to reconsider any or all of such items, each must be reconsidered separately.

8. Whether the House should reconsider any or all of such disapprovals, and the order of reconsideration, is at the discretion of the House.

Respectfully,

MARK MCELROY
Attorney General