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STATE OF ILLINOIS  
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SPRINGFIELD

October 11, 1973

FILE NO. S-630

**CONSTITUTION:**  
Illegality of altering a  
condition or limitation of  
an appropriation.

Honorable George W. Lindberg  
Comptroller  
State of Illinois  
201 State House  
Springfield, Illinois 62706

Dear Mr. Lindberg:

I have your letter wherein you state:

"I am attaching a document filed by the Governor in connection with Senate Bill 698 which was passed by the Legislature to provide the ordinary, contingent and distributive expenses of the Illinois Junior College Board.

You will note that this reduces the appropriation stated on page 2, line 1-7, for distribution from \$63,825,000 to \$59,697,900.

This is purported to be done under the provisions of Section 9(d) of Article IV of the Constitution.

The very next item purports under the same Section to reduce the flat grant rate from

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\$18.50 per semester hour to \$17.61 per semester hour. I desire your opinion as to the propriety of this action. Does this constitute a proper reduction of appropriation under Section 9(d), as it purports to be, or is it in fact, an amendatory veto under Section 9(e)? If the latter, must the entire bill, including the reduced appropriations, await final action of the Legislature under Section (3) before any of it becomes effective?"

Please find enclosed a certified copy of Senate Bill 698, which is titled "An Act to provide for the ordinary, contingent and distributive expenses of the Illinois Junior College Board" (P.A. 78-165), signed by the Governor subject to certain exceptions which are delineated in a gubernatorial message accompanying Senate Bill 698. Also, please find enclosed said gubernatorial message wherein the Governor claims to have reduced certain items of appropriations pursuant to the powers granted to him by section 9(d) of article IV of the Illinois Constitution of 1970.

Said section 9(d) reads as follows:

"(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the re-

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quired record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount."

As can be noted from an examination of the gubernatorial message accompanying Senate Bill 698, the Governor has attempted to reduce and change that part of section 3 of Senate Bill 698 which reads as follows:

"Section 3. The following named amounts, or so much thereof as may be necessary, respectively, are appropriated to the Illinois Junior College Board for the purposes specified:

\* \* \*

For distribution as flat rate grants for instructional programs to junior college districts maintaining a recognized junior college at the uniform rate of \$18.50 per semester hour or equivalent carried through each mid-term by students who are residents of this State ..... \$63,825,000

\* \* \*

In his accompanying message the Governor indicates an intent to reduce the item of appropriations from \$63,825,000 to \$59,697,900. There is no question as to the legality of this reduction. However, the Governor also attempted to reduce the uniform rate at which the Junior College Board is directed by the General Assembly to distribute the appropriation among

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junior college districts maintaining a recognized junior college. The General Assembly has directed the Junior College Board to distribute this item of appropriations to junior college districts maintaining a recognized junior college at the uniform rate of \$18.50 per semester hour or equivalent carried through each mid-term by students who are residents of the State of Illinois. The Governor proposes to reduce the uniform rate of the distribution to \$17.61 per semester hour or equivalent.

You have inquired as to whether or not the Governor may reduce the uniform rate of distribution from \$18.50 per semester hour or equivalent to \$17.61 per semester hour or equivalent. Thus, the scope of the power granted to the Governor by section 9(d) of article IV of the Illinois Constitution of 1970 to reduce items of appropriations must be examined.

The State Constitution is to be construed as a limitation on the powers of the legislature but it is a grant of power to the executive and judicial departments. This point was aptly made by the Illinois Supreme Court in Field v. People, 3 Ill. 79. In deciding the question of the

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Governor's power to remove the Secretary of State from office, the court, at pages 80-82, states as follows:

"In deciding this question, recurrence must be had to the constitution. That furnishes the only rule by which the court can be governed. That is the charter of the governor's authority. All the powers delegated to him by, or in accordance with, that instrument, he is entitled to exercise, and no others. The constitution is a limitation upon the powers of the legislative department of the government; but it is to be regarded as a grant of powers to the other department. Neither the executive nor the judiciary, therefore, can exercise any authority or power, except such as is clearly granted by the constitution.

\* \* \*

\* \* \* But upon the principle of our government, that the sovereign power of the state resides in the people, and that only such powers as they have delegated to their functionaries, can be exercised, where a claim of power is advanced by the executive, the question is, not whether the power in question has been granted to the people, but whether it has been granted to the executive; and if the grant can not be shown, he has no title to the exercise of the power.

\* \* \*

Section 9(d) of article IV of the Illinois Constitution of 1970 grants to the Governor the power to reduce "any item of appropriations in a bill presented to him." It must be determined if the uniform rate of \$10.50 per semester hour

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or equivalent is an item of appropriations. If it is not, then, the Governor is without power to reduce this figure to \$17.61; any attempt to do so would be an unconstitutional invasion of the powers of the legislative branch of government. Fergus v. Russell, 270 Ill. 304.

An "item of appropriation" is a specified sum of money to be used for a specified purpose. People v. Brady, 277 Ill. 124; Commonwealth v. Dodson, 176 Va. 281, 11 S.E. 2d 120; Fairfield v. Foster, 25 Ariz. 146, 214 P. 319; Green v. Rawls, 122 So. 2d 10 (Fla., 1960).

In People v. Brady, 277 Ill. 124, the General Assembly made a general appropriation to the State Board of Agriculture totaling \$153,150.00. Then, the General Assembly broke this general appropriation down into forty-four separate purposes, opposite each of which a specific amount was set down. The Illinois Supreme Court held that each of these forty-four separate purposes were distinct items of appropriation which were subject to the Governor's veto power. (Ill. Const., art. V, sec. 16 [1870]). At page 131, the court defined the word "item" as follows:

"\* \* \* The word 'item' is in common use and well understood as a separate entry in an account or a schedule, or a separate particular

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in an enumeration of a total which is separate and distinct from the other particulars or entries, and the items vetoed by the Governor come within that meaning. \* \* \*

Note that in defining the term "item" the Illinois Supreme Court placed emphasis on the necessity that the particular sum be "separate" and "distinct."

In Commonwealth v. Dodson, 176 Va. 281, 296, 11 S.E. 2d 120, the Supreme Court of Appeals of Virginia defined an "item of appropriation" as follows:

"\* \* \* An indivisible sum of money dedicated to a stated purpose. It is something different from a provision or condition, and where conditions are attached, they must be observed; where none are attached, none may be added."

In Fairfield v. Foster, 25 Ariz. 146, 156, 214 P. 319, at page 323, the court said:

"\* \* \* The International Dictionary gives 'item' as a 'separate particular in an enumeration, account or total.' \* \* \*"

In Green v. Rawls, 122 So. 2d 10 (Fla. 1960), the Florida Legislature passed a general appropriation bill for the 1959-61 biennium. Included in this bill was an item of appropriation for salaries for employees of the Division of Corrections which specifically called for a salary of \$12,000 per annum for the director; likewise, there was an item of appropriation

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for salaries for the Florida Board of Forestry, including a \$10,000 per annum salary for the State Forester. The Governor of Florida vetoed the \$12,000 per annum for the Director of the Division of Corrections and the \$10,000 per annum for the State Forester. The Florida Supreme Court upheld this veto as a veto of an item of appropriation. The court, at page 16, states:

"Quite obviously the legislature did go to the extent of saying that a specified sum of money raised by taxation, i.e. \$12,000 and \$10,000, respectively, should be spent for specified purposes, i.e. for the salaries of the two employees designated. It is true that these specifications as to amount and purpose were included within an overall appropriation for salaries for the two agencies of government, but this fact does not destroy their identity or substance as 'items' for both had a specified purpose and the amount to be used therefor was designated. These two factors are the essentials of an item.  
\* \* \* "

I am of the opinion that the uniform rate of \$18.50 per semester hour or equivalent is not an item of appropriation. One of the essential ingredients of an item of appropriation is that it be a specified sum of money. The uniform rate of \$18.50 per semester hour or equivalent is not a specified sum of money.

The General Assembly has appropriated \$63,825,000



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(reduced by the Governor to \$59,697,900) to the Junior College Board and has directed the board to distribute this money among the various junior college districts that maintain a recognized junior college. The \$18.50 is a rate or multiplier which is to be used by the board in determining what portion of the \$63,825,000 (reduced by the Governor to \$59,697,900) is to be allocated to each eligible junior college district.

The \$18.50 is a condition or limitation on the Junior College Board's power to distribute the item of appropriation to eligible junior college districts. Section 9(d) of article IV of the Illinois Constitution of 1970 grants to the Governor only the power to veto or reduce an item of appropriation. The power to veto or reduce an item of appropriation does not authorize the Governor to alter or eliminate a condition or limitation placed on the expenditure of an appropriation by the General Assembly. The Opinion of the Justices, 294 Mass. 616, 2 N.E. 2d 789; Fulmore v. Lane, 104 Tex. 499, 140 S.W. 405; State v. Holder, 76 Miss. 158, 23 So. 643; Bengzon v. Secretary of Justice, 299 U.S. 410; Commonwealth v. Dodson, 11 S.E. 2d 120.

In 1936, the Massachusetts Constitution granted to the Governor the power to veto a bill, to return a bill with specific recommendations for change, and the power to veto

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or reduce an item of appropriation.

The Supreme Judicial Court of Massachusetts in an opinion to the Massachusetts House of Representatives declared it to be unconstitutional for the Governor to attempt to use his power to veto or reduce an item of appropriations, to alter or eliminate conditions or limitations that have been placed upon the expenditure of an appropriation. (In re Opinion of the Justices, 294 Mass. 616, 619-621, 2 N.E. 2d 789, 790). The facts were stated by the court to be as follows:

"\* \* \* His Excellency the Governor submitted to the General Court during the current year a budget which contained this item: 'For payment of extraordinary expenses and for transfers made to cover deficiencies, with the approval of the governor and council, a sum not exceeding \$100,000.' Touching that item the general appropriation bill based on that budget as enacted by the General Court (as shown on the House calendar for June 3, 1936, and transmitted with the order) contained this: '101 For payment of extraordinary expenses and certain other expenditures as authorized by section eight of chapter six of the General Laws, as appearing in the Tercentenary Edition thereof, [subject, however, to the condition that not less than fifty thousand dollars of the sum appropriated by this item shall be reserved for use in carrying out the provisions of sections twenty-five to thirty-three, inclusive, of chapter thirty-three of the General Laws, as so appearing, not less than ten thousand dollars thereof shall be reserved for use for the entertainment of the President of the United States and other distinguished

guests while visiting or passing through the commonwealth, and not more than five thousand dollars thereof, in the aggregate, shall be transferred to items ninety-five, ninety-seven, ninety-eight and ninety-nine.) a sum not exceeding one hundred thousand dollars (1935 appropriation, \$100,000) \$100,000.00.' This matter came up for action in the House of Representatives in this form: 'So much of this item as is enclosed in brackets has been disapproved by the Governor, \* \* \*.'

The court held that the Governor could not alter or eliminate any conditions or limitations placed on the expenditure of an appropriation by the Massachusetts Legislature while at the same time generally approving the bill. Such action would be tantamount to gubernatorial legislation.

The court reasoned as follows:

"\* \* \* 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. The veto power conferred upon the Governor was designed to enable him to recommend the striking out or reduction of any item or part of an item. In the present instance His Excellency the Governor did not undertake to veto the appropriation of \$100,000 made by item 101, or any part of it; nor to reduce that amount or any part of it appor-

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tioned to a specific purpose. He sought, rather, as shown by his message, to enlarge the appropriation made by the General Court by throwing the \$100,000 into a common fund to be used for any one of several different purposes. We are of opinion that the power conferred upon him by said article 63 does not extend to the removal of restrictions imposed upon the use of the items appropriated. It is plain that no other provision of the Constitution confers power upon the Governor to disapprove the condition attached to the item in question.

The result is that the disapproval of that condition was a nullity. \* \* \*

In re Opinion of the Justices,  
294 Mass. 616, 620-621, 2 N.E.  
2d 789, 790-791.

The Illinois Constitution grants to the Governor the power to veto a bill (Ill. Const., art. IV, sec. 9(b)), to return a bill without signature with specific recommendations for change (Ill. Const., art. IV, sec. 9(e)) and the power to veto or reduce an item of appropriations while generally approving the remainder of the bill (Ill. Const., art. IV, sec. 9(d)). The Governor's action in the instant case does not fall within any of those grants of power to him. The Governor may not use the power to reduce an item of appropriations, to alter a condition or limitation of an appropriation.

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The Texas Constitution authorized the Governor to veto an item of appropriations. Those items not vetoed became law upon approval by the Governor. The Supreme Court of Texas in Fulmore v. Lane, 104 Tex. 499, 140 S.W. 405, pointed out the distinction between the veto power in respect of a bill in the general sense and an appropriation bill:

"\* \* \* '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 non-effective.'"

Section 73 of the Mississippi Constitution grants to the Governor the power to veto parts of any appropriation bill. In State v. Holder, 76 Miss. 158, 23 So. 643, the Mississippi Supreme Court held that this section of the constitution granted no power to the Governor to transform a contingent or conditional appropriation into an absolute one. In that case, the Mississippi Legislature made an

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appropriation for the Industrial Institute and College, setting apart certain sums for certain appropriate purposes but declared that payments to officers and employees should not be available unless the power of approval should be conferred upon the president by the Board of Trustees. This provision, as to the president, the Governor vetoed.

"\* \* \* Section 73 was framed with a view of guarding against the evils of omnibus appropriation bills securing unrighteous support from diverse interests, and to enable the governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the legislature as the condition of becoming law. Thus viewed, section 73 is eminently wise, and will prove useful in practice, as corrective of an evil; but if a single bill, making one whole of its constituent parts, 'fitly joined together,' and all necessary in legislative contemplation, may be dissevered by the governor, and certain parts, torn from their connection, may be approved, and thereby become law, while the other parts, unable to secure a two-thirds vote in both houses, will not become law, we shall have a condition of things never contemplated, and appalling in its possible consequences. \* \* \*"

It cannot be argued that because Senate Bill 698 contains a directive by the General Assembly to the Junior College Board to distribute the appropriation at the rate of \$18.50 per semester hour or equivalent the bill therefore

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violates that portion of section 3(d) of article IV of the Illinois Constitution of 1970 which reads:

"\* \* \* Appropriation bills shall be limited to the subject of appropriations."

The Junior College Board has been granted the substantive authority to distribute such flat rate grant appropriations. Section 2-16 of the Public Junior College Act (Ill. Rev. Stat., 1972 Supp., ch. 122, par. 102-16) reads, in part, as follows:

"Any Class I junior college district which maintains a junior college organized by the State Board is entitled to claim a flat rate grant of not less than \$16.50 for each semester hour or equivalent in a course carried through each mid-term by each student in attendance who is a resident of Illinois and such other special grants as may be authorized by the General Assembly. The rate of the flat rate grant shall be specified for each year in the Act making the appropriation for this purpose. \* \* \*"

Additionally, the constitution only demands that appropriations bills be limited to the subject of appropriations. Clearly, the uniform rate of \$18.50 per semester hour or equivalent is not a substantive grant of power to the Board, and as a condition, limitation or direction as to expenditure of the funds is germane to the subject of appropriations.

I am, therefore, of the opinion that the Governor's reduction of the appropriation from \$63,825,000 to \$59,697,900

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was legal; however, the attempted reduction of the uniform rate of \$18.50 to \$17.61 was unconstitutional and therefore a nullity.

Additionally, in your letter you raise the question as to whether the nugatory exercise of the reduction veto with respect to the flat grant rate of \$18.50 may in effect be constituted a valid exercise of the amendatory veto under section 9(e).

In my opinion, it is clear that the attempted reduction of the flat grant rate was neither intended as an amendatory veto nor can it properly be construed as such under applicable rules of constitutional construction. The Governor's intent with respect to his message of July 16, 1973 could scarcely have been expressed more plainly than it was in the opening paragraph where the Governor stated, in part:

"Pursuant to Article IV, Section 9(e) of the Constitution of 1970, I hereby reduce and return the items listed below from Senate Bill 698, entitled 'An Act to Provide for the Ordinary, Contingent and Distributive Expenses of the Illinois Junior College Board.'"

In addition, it should be noted that the format of the entire message, with its tabular presentation of "enacted" versus "reduced" amounts, is characteristic of reductions as opposed to amendments.



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In this context, to find that the Governor intended his message to operate in any degree under the amendatory veto provisions of section 9(e) would constitute a strained and speculative interpretation which would threaten an interruption of financial support to the Junior College Board pending further legislative action. Such an interpretation, with its inevitable mischievous consequences, should be avoided. People ex rel. Stickney v. Marshall (1884), 6 Ill. 672.

Since, for the reasons stated, the Governor's attempted reduction on the flat grant rate of \$18.50 is neither an effective reduction veto under section 9(d) nor an amendatory veto under section 9(e), that provision stands as originally enacted and the balance of Senate Bill 698, as modified by the Governor, has become a law.

Very truly yours,

A T T O R N E Y G E N E R A L