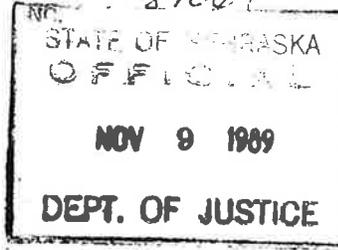


Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA
TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
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DATE: November 9, 1989

SUBJECT: Line item vetoes of appropriations for the University of Nebraska, and the effect of overrides by the Legislature.

REQUESTED BY: Senator Dennis Baack,
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

LB 813, the main appropriations bill for state government during the 1989 legislative session, was passed by the Legislature on May 19, 1989. Section 53 of LB 813 dealt with appropriations for the University of Nebraska, and language at the beginning of that section stated:

There is hereby appropriated to the Board of Regents of the University of Nebraska for expenditures and distribution to the campuses by the University of Nebraska Central Administration the following sums of money.

	FY 1989-90	FY 1990-91
General Fund	205,525,325	208,880,915
Program Total	205,525,325	208,880,915

Immediately following this appropriations language in §53, there was a heading "For Informational Purposes Only," followed by a lengthy discussion of the various programs which the Legislature intended to fund within the overall University appropriation. That discussion listed itemized amounts for various specific programs including \$386,000 in Fiscal Year 1989-90 and \$397,580 in Fiscal Year 1990-91 for operation of a family practice residency program involving the University Medical Center and the Lincoln Medical Education Foundation.

On May 23, 1989, Governor Orr made a number of line item vetoes in connection with LB 813. With respect to §53, she lowered the total funding for the University of Nebraska as follows:

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	FY 1989-90	FY 1990-91
General Fund	203,060,821	206,165,800
Program Total	203,060,821	206,165,800

In the portion of §53 labeled "For Informational Purposes Only," she also made a series of line item vetoes indicating the various programs which were the subject of her appropriations reductions. The total of those specific cuts equaled the total amount removed from the main University appropriation. Governor Orr vetoed the entire amount set aside for the family practice residency program.

On May 23, 1989, the Legislature voted, by the necessary constitutional majority, to override the Governor's veto of the monies allocated to the family practice residency program. However, that override was made in the portion of §53 labeled "For Informational Purposes Only." The main total appropriation figure established for the University as a result of the Governor's earlier line item veto was left unchanged.

You now ask two questions. First, what was the effect of the Legislature's veto override; that is, were the additional amounts for the family practice residency program actually added back into the main appropriation? Second, if the Governor can line item veto specific University programs within the University appropriation, can the Legislature override those specific program vetoes, or must it restore the entire amount of the reduction for the University? Our conclusions are set out below.

In Board of Regents v. Exon, 199 Neb. 146, 149, 256 N.W.2d 330, 333 (1977), our state supreme court stated:

The general appropriation bill adopted by the Legislature in 1975, as amended by LB 972 in 1976, and the general appropriation bill adopted in 1976, LB 690, contained numerous statements directing the Board of Regents or employees of the University to take certain actions. The trial court held that the statements in these bills which do not constitute an appropriation of funds were advisory only and not mandatory and that the Legislature was without authority to direct employees of the University. Although the defendants did not challenge this finding in their assignments of error, we have considered it and agree that it is correct.

The Legislature cannot use an appropriation bill to usurp the powers or duties of the Board of Regents and to give directions to the employees of the University. The general government of the University must remain vested in the Board of Regents. In prescribing the powers and duties of the Regents a legislative act must

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not be so detailed and specific in nature as to eliminate all discretion and authority on the part of the Regents as to how a duty shall be performed.

We assume that this case provides the reason why §53 of LB 813 contains a general, total appropriation to the University followed by specific program allocations labeled "For Informational Purposes Only." In any event, we believe that, under the language of LB 813, the actual operative item of appropriation to the University is the total amount set out prior to the heading "For Informational Purposes Only." The specific program figures set out subsequently are, as their heading implies, for informational purposes, and represent a suggestion by the Legislature to the Board of Regents as to how the Legislature believes the total appropriation should be spent. It logically follows that an override of the Governor's line item veto with respect to the University must involve the operative total appropriation figure for that entity. We believe that the override here, where the total figure was left unchanged after the veto, simply constitutes the Legislature's suggestion to the Board of Regents that the family practice residency program in some way should be funded. As you have suggested, an appropriation of actual dollars for that purpose would therefore require a deficit appropriation.

Your second question involves how the Legislature must deal with line item vetoes by the Governor of specific programs involving the University of Nebraska.

Article IV, Section 15 of our Nebraska Constitution was amended in 1976 to provide for line item overrides of the Governor's line item vetoes of appropriations bills. See, LB 17, 84th Nebraska Legislature, First Session, 1975; Introducer's Statement of Purpose, LB 17, 84th Nebraska Legislature, First Session, 1975. Since the Legislature may now override vetoes on an item-by-item basis, the first issue in the context of the University appropriation is what is an "item" with respect to §53 of LB 813. As discussed above, we believe that the actual operative appropriation "item" in that section is the total lump sum appropriation made to the University. The various subsequent funding figures are, of necessity, simply suggestions to the Board of Regents and not "items" within the contemplation of Article IV, Section 15 of our state constitution. Therefore, the Legislature's line item override authority pertains to the total University appropriation set out in the initial portion of §53.

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The total reduction made by the Governor in the University's main appropriation involves several suggested allocations of funds within the University budget in addition to the family practice residency program which is the focus of your concern. Since you desired to fund only the family practice program, or a portion of the Governor's overall reduction, the next question presented by your opinion request is whether the total appropriation "item" for the University can be partially restored through the override process. We believe the answer to that question is no; a legislative override of the Governor's veto of the total appropriation "item" for the University can only be used to restore the total amount of the reduction by the Governor.

We have been able to find little law in this area. However, it is clear that the words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning. State ex rel. Douglas v. Beermann, 216 Neb. 849 347 N.W.2d 297 (1984). The constitutional provision at issue, Article IV, Section 15, provides that the Legislature may "repass" an item or items vetoed by the Governor in an appropriation measure by a three-fifths approval of the members elected. "Repass" is generally defined as "to pass back or to pass again." Webster's New World Dictionary, Second College Edition (1982). Consequently, we believe that the Legislature may, through the line item override, "repass" or restore the total original amount of the "item" vetoed by the Governor. We do not believe that the Legislature may partially restore an item through the override process. This position is consistent with that taken in our Opinion No. 120 dated May 20, 1983, in which we indicated that the Legislature could not restore a portion of an appropriation program through the override process.

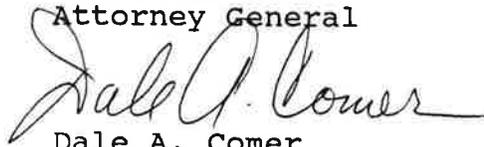
While the Legislature cannot partially restore the amount of an appropriations item through the override process, it is also clear that the Legislature has full control over the passage of bills, and may amend a bill at any time permitted by its rules during the bill's progress through the Legislature. State ex rel. Martin v. Ryan, 92 Neb. 636, 139 N.W. 235 (1912). In addition, we have previously indicated that a bill returned to the Legislature by the Governor without his or her signature is again before that body and may be reconsidered. Report of the Attorney General 1969-1970, Opinion No. 74, page 111. Therefore, it appears to us that a bill could be amended subsequent to its return by the Governor so as to include a partial restoration of funds vetoed by the Executive if the Legislature's rules so provide. Such an amended bill would, of course, have to again be presented to the Governor for his or her consideration.

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In sum, we believe that the line item override for the family residency program in LB 813 did not bring about a restoration of those funds to the University budget, but rather simply indicated the Legislature's intent to the Board of Regents. We also believe that the Legislature may not partially restore funds within an item vetoed by the Governor. The Legislature must restore the entire amount of the specific item through the line item override process.

Respectfully submitted,

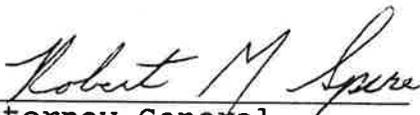
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cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:


Attorney General

5-91-13