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August 5, 2009

Honorable Karen Bass
Room 219, State Capitol

GOVERNOR'S LINE-ITEM VETO AUTHORITY: REDUCTIONS TO EXISTING APPROPRIATIONS - #0920903

Dear Ms. Bass:

You have asked whether the Governor's vetoes of those items or sections in Assembly Bill No. 1 of the 2009-10 Fourth Extraordinary Session (hereafter A.B. 1) that only reduced the amount of an existing appropriation previously authorized by the statute enacted as the Budget Act of 2009 (Ch. 1, 2009-10 3rd Ex. Sess.) constitute a valid exercise of the Governor's "line-item" veto authority granted by subdivision (e) of Article IV of Section 10 of the California Constitution.[1] As discussed below, we conclude that, in vetoing items and sections of A.B. 1 that proposed only reductions to existing appropriations enacted by the Budget Act of 2009, the Governor exceeded his "line-item" veto authority.

In A.B. 1, the Legislature, among other things, proposed to reduce the amount of existing appropriations in various items contained in the previously enacted Budget Act of 2009. For example, in Section 568 of A.B. 1, the Legislature added Section 17.50 to the Budget Act to reduce by $9,483,000 the appropriation for the California Department of Aging previously enacted by Item 4170-101-0001 of Section 2.00 of the Budget Act of 2009. In his veto, the Governor purported to increase the amount of the reduction in the appropriation in Item 4170-101-0001 to $15,643,000.[2] In his veto, the Governor also purported to increase reductions in A.B. 1 in existing appropriations previously enacted for the Hastings College of Law, contained in Item 6600-001-0001 of Section 2.00 of the Budget Act of 2009, from $1,030,000 to $2,030,000, and for local assistance relating to tax relief,

[1] All article references are to the California Constitution.

[2] The Governor's vetoes made similar increases to reductions to existing appropriations in the Budget Act of 2009 that were proposed by Sections 570 to 575, inclusive, of A.B. 1.

contained in Item 9100-101-0001 of Section 2.00 of the Budget Act of 2009, from $6,948,000 to $34,739,000 (see Secs. 473 and 541, A.B. 1).

The question presented is whether the Governor exceeded his line-item veto authority in acting to make additional reductions in the items or sections of A.B. 1 identified above, or in other items or sections of A.B. 1 that similarly proposed only a reduction of an existing appropriation enacted in the Budget Act of 2009.

By way of background, the California Constitution generally permits the Legislature to pass a bill by a majority vote in each house (subd. (b), Sec. 8, Art. IV). Once a bill is passed and presented to the Governor, the Governor may sign the bill into law or veto the entire bill (subd. (a), Sec. 10, Art. IV). If the Governor vetoes the bill, the Legislature may override the veto with a two-thirds vote in each house (Ibid.).

The California Constitution contains additional provisions that apply specifically to bills that make an appropriation of state funds. A bill making an appropriation from the General Fund of the state, other than one making an appropriation for the public schools, is required to be passed by a two-thirds vote in each house (subd. (d), Sec. 12, Art. IV). Further, when a bill containing one or more items of appropriation is presented to the Governor, the Governor may sign it, veto it in its entirety, or "reduce or eliminate one or more items of appropriation while approving other portions of [the] bill" (subd. (e), Sec. 10, Art. IV). An item of appropriation reduced or eliminated by the Governor may be restored by overriding the Governor's veto in the same manner as other bills (Ibid.).

When exercising the powers of approving or vetoing legislation, the Governor is a special agent of the legislative branch with limited powers, and may act only in the specified mode and exercise only the granted powers (*Lukens v. Nye* (1909) 156 Cal. 498, 501-502). If he or she attempts to exercise these powers in a different mode, or to exercise powers not given, his or her act will be wholly ineffectual and void for any and every purpose (Id., at p. 502). That is, when the Governor goes beyond the limits of these powers in the attempt to exercise them, his or her acts, so far as they exceed his or her authority, are of no force (Ibid.). Thus, the authority of the Governor to exercise the power of the line-item veto is limited to reducing or eliminating "items of appropriation" of money (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1089; hereafter *Harbor*).[3]

The threshold step in assessing the validity of the Governor's exercise of the line-item veto power is determining whether the provision being vetoed is actually an item of appropriation (Ibid.). An "appropriation" is the sole means whereby money may be drawn from the State Treasury (Sec. 7, Art. XVI). To constitute an appropriation, the statutory

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[3] In *Harbor*, the California Supreme Court rejected the claim that the Governor's veto power should be liberally construed (Id., at p. 1088, fn. 9). The court cited Section 3 of Article III for the proposition that one branch of government may not exercise the powers of another "except as permitted by this Constitution," concluding on that basis that "in exercising the power of the veto the Governor may act only as permitted by the Constitution" (Id., at pp. 1088-1089).

provision in question must give a state officer authority to expend an ascertainable sum of money for a particular purpose (*Stratton v. Green* (1872) 45 Cal. 149; *Humbert v. Dunn* (1890) 84 Cal. 57, 59). Put another way, "[a]n appropriation is a legislative act setting aside 'a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purpose'" (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1282, quoting *Ryan v. Riley* (1924) 65 Cal.App. 181, 187). As summarized by the California Supreme Court in *Harbor*, to be considered an appropriation, a provision of a statute must set aside moneys for payment of a claim, make an appropriation of moneys from the public treasury, or add an additional amount to funds already provided for (*Harbor*, supra, at p. 1089).

In *Harbor*, the court made it clear that language contained in a bill does not constitute an "item of appropriation" merely because it is related to an item of appropriation contained in the enacted Budget Bill. In order for the provision in the subsequent bill to be considered an item of appropriation, it must itself have the effect in law of an appropriation, as discussed above (*Harbor*, supra, at pp. 1089-1090).[4] Thus, the fact that provisions of A.B. 1 are related to existing appropriations previously authorized by the Budget Act of 2009 does not mean that those provisions are items of appropriation subject to the Governor's line-item veto. Rather, that line-item veto authority is applicable to the provisions of A.B. 1 only to the extent that those provisions themselves are items of appropriation, namely, that their effect, if enacted into law, would be to grant authority to expend, from the public treasury, a certain sum of money for a specified purpose. We conclude here that the items and sections of A.B. 1 that proposed only to make reductions in existing, previously enacted appropriations do not satisfy this requirement and, thus, do not constitute items of appropriation that are subject to the Governor's line-item veto power.

This conclusion is not contradicted by the California Supreme Court's decision in *Wood v. Riley* (1923) 192 Cal. 293 (hereafter *Wood*). In *Wood*, at issue was a provision contained in the Budget Bill in which the Legislature directed the Controller to transfer 1 percent of appropriations made for the salaries and support of teachers, colleges, and special schools for use by the Director of Education for the payment of "salaries and support of the general administrative office of the division of normal and special schools," for which funding was not included in the budget previously proposed by the Governor (*Wood*, supra, at pp. 304-305). Petitioners argued that the provision was not an item of appropriation, but rather an allocation of moneys otherwise appropriated (Id., at p. 297; citations omitted). The *Wood* court disagreed, holding that the provision constituted an item of appropriation because "[i]t added a specific amount to the allowance already made for the use of the state board of education and the state superintendent of public schools" (Id., at p. 305; emphasis added).

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[4] The court stated, in construing the term "item of appropriation," that no definition of that term "can reasonably embrace a provision ... which does not set aside a sum of money to be paid from the public treasury" (Id., at p. 1092).

Thus, as the California Supreme Court observed more than 60 years later in *Harbor, Wood* is inapposite where the provision in question does not itself constitute an item of appropriation (*Harbor*, supra, at pp. 1091-1092).

For the reasons above, we conclude that an item or section of a bill that proposes only to make a reduction in an existing item of appropriation previously enacted in the Budget Act of 2009 is not itself an item of appropriation subject to the Governor's line-item veto authority under subdivision (e) of Section 10 of Article IV. The legal effect of an item or section of a bill that solely makes a reduction of a previously appropriated amount is not to grant authority to a state officer to expend a specified sum, but to lessen that authority. Unlike an appropriation, the reduction of an existing appropriation does not set aside moneys for payment of a claim or make a new appropriation of moneys from the public treasury, nor does it add additional amounts to funds already provided for by an existing appropriation or identify a new purpose for which moneys may be expended. A state officer is not granted new expenditure authority, nor is a state officer's expenditure authority extended in any way by an item or section of a bill that solely makes a reduction of an existing appropriation.[5]

Therefore, it is our opinion that the Governor's vetoes in items and sections of Assembly Bill No. 1 of the 2009-10 Fourth Extraordinary Session that only reduced the amount of an existing appropriation previously authorized by the statute enacted as the Budget Act of 2009 did not constitute a valid exercise of his "line-item" veto authority granted by subdivision (e) of Section 10 of Article IV of the California Constitution.

Very truly yours,

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Legislative Counsel

By
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[5] Likewise, it is our view that a bill that reduces an existing appropriation from the General Fund would not thereby be required to comply with the two-thirds vote mandate that applies to appropriations from the General Fund (see subd. (d), Sec. 12, Art. IV).