

Opinion No. 57-299

November 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Paul L. Billhymer, Assistant Attorney General

TO: Joseph C. Gardner, Superintendent, New Mexico Boys' School, P. O. Box 38, Springer, New Mexico

QUESTION

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Can the proceeds from the sale of the bonds provided for in Chapter 201, Laws 1957, be used to erect, furnish and equip a Vocational Trades building at the New Mexico Boys' School?

CONCLUSION

No.

OPINION

ANALYSIS

This question arises as a result of the Governor's partial veto of Chapter 201, Laws 1957. In order to put the question in proper perspective, it is necessary to quote § 1 of Chapter 201, Laws of 1957. It reads as follows:

"That for the purpose of erecting, furnishing and equipping certain buildings **specified herein** at the New Mexico Boys' School at Springer, the board of trustees of the New Mexico Boys' School at Springer are hereby authorized to anticipate the proceeds of the collection of taxes imposed upon natural resources by Chapter 103, New Mexico Session Laws of 1937, as amended, to the extent hereinafter authorized by the issuance and sale of bonds or debentures not exceeding the aggregate of \$ 100,000 at such time and bearing such rate of interest, not exceeding four percent per annum, as the board of trustees of the New Mexico Boys' School at Springer may determine, **and for the specified purposes of (1) erecting and furnishing an addition to a building to be used for dining purposes; (2) erecting and furnishing an addition for living quarters; and (3) erecting and furnishing a bakery, provided that no money shall be expended unless each of the above purposes is accomplished under this bond issue.**"

We have underlined the part which was deleted from the Act by the Governor's partial veto.

It is at once apparent that the act, as originally passed by the Legislature, provided that the proceeds from this bond issued were to be used for certain specified purposes, and these were carefully spelled out even to the point of providing that all of the purposes had to be accomplished in order for the money to be validly used. We note in passing that the building of a vocational building was not one of the named purposes.

The primary question thus becomes, can the Governor, by a partial veto, completely change the purpose of an act. This question at various times has been before the courts in various states. In the case of *Dickson v. Saiz*, 62 N.M. 227, 308 P. 2d 205, although the question was not specifically before the Court, there is an indication of its answer in the Per Curiam Opinion on the Motion for Rehearing, wherein the Court stated:

"We entertain no doubt of the power of this Court, when and if a Chief Executive discards the robe of Governor and puts on that of a legislator, in exercising the power of partial veto, we shall be able to distinguish between the two and rule accordingly, whether the claimed transformation be in scaling an appropriation or otherwise."

The Court at this point was making reference to the well known rule with reference to partial vetoes, which is that the Governor's action in such cases is purely negative and the Governor has no power of affirmative legislation on a point.

See *Cascade Telephone Co. v. Tax Commission of Washington*, 30 P. 2d 977, 176 Wash. 616; *Mills v. Porter*, 69 Mont. 325, 222 P. 428, 35 A.L.R. 592. For a clear and concise statement of the specific rule, we call attention to *State v. Holder*, 76 Miss. 158, 23 So. 643, as follows:

"And after all, and despite pragmatic utterances of political doctrinaires, the executive, in every republican form of government, has only a qualified and destructive legislative function, and never creative legislative power. If the governor may select, dissent, and dissever, where is the limit of his right? Must it be a sentence or a clause or a word? Must it be a section, or any part of a section, that may meet with executive disapprobation? May the governor transform a conditional or a contingent appropriation into an absolute one, in disregard and defiance of the legislative will? That would be the enactment of law by executive authority without the concurrence of the legislative will, and in the face of it."

For a collection of the cases covering partial veto, attention is called to 35 A.L.R. p. 600 and 99 A.L.R. at p. 1268. See also *Commonwealth v. Dodson*, (Va.), 11 S. E. 2d 120.

When the above announced rules are applied to the question before us, we believe it is readily apparent that the Governor's partial veto of Chapter 201, Laws 1957, was more than a negative act. It was affirmative inasmuch as it accomplished a purpose totally different from that contemplated by the Legislature. The Legislature had provided that the proceeds from the bond sale was to be used for purposes set forth with detailed specificity. By deleting the parts setting forth the specific purposes, the Governor, in effect, authorized the use of the money for the building of any buildings as determined

by the Board of Trustees. Obviously, the Legislature had refused to grant such broad power, and, under the rules above announced, the Governor cannot by a partial veto authorize such use.

We, therefore, conclude that the New Mexico Boys' School cannot use the proceeds from the bond sale authorized by Chapter 201, Laws of 1957, to erect, furnish and equip a Vocational Trades building.