

## **Opinion No. 66-133**

December 7, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Hon. Eugene W. Peirce, Jr., State Representative, Bernalillo County, 2708 Tennessee, N. E., Albuquerque, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Within the standards provided in Opinion of the Attorney General No. 66-8 can Chapter 65, Laws 1966 be defined as an appropriations bill?
2. If Chapter 65, Laws 1966 qualifies under Opinion of the Attorney General No. 66-8, will it qualify as an appropriations measure under Article IV, Sections 16, 22 and 30 of the Constitution?
3. Did the Governor act within his legal authority in vetoing portions only of Laws 1966, Chapter 65?
4. If Chapter 65, Laws 1966 is not an appropriations bill, what is the effect of the partial veto? That is, shall the entire act be regarded as vetoed or shall the partial veto be considered invalid and the Act stand?
5. If the partial veto is not valid, what is the status of any agreements entered into by the state highway commission in contemplation of the vetoed portion? Would the status differ depending upon whether or not funds had been expended?

#### **CONCLUSION**

1. No.
2. It does not qualify as an appropriations measure under the Opinion of the Attorney General No. 66-8 or Article IV of the New Mexico Constitution.
3. No.
4. The Act as enrolled and engrossed is valid.
5. See Analysis.

### **OPINION**

{\*176} ANALYSIS

Chapter 65, Laws 1966 is neither an appropriations bill nor a bill appropriating money within the meaning of Opinion of the Attorney General No. 66-8 or Article IV of the New Mexico Constitution. We have examined the bill as passed by the Legislature and neither the title nor the body of the bill relates to the appropriation of the funds. Chapter 65, Laws 1966 is not even a bill of general legislation containing an incidental appropriation. Chapter 65 is devoid of an appropriation.

Consequently, it does not qualify as one of those types of measures upon which the Governor can exercise his partial veto power pursuant to Article IV of the New Mexico Constitution. We, therefore, conclude that he did not act within his constitutional authority in attempting to partially veto portions of Chapter 65, Laws 1966.

We feel constrained to comment also that at the time this bill was under consideration by the Governor he was advised by this office, through the Attorney for the Liaison Office, that he did not have the legal authority to partially veto this measure. The records in the Governor's Liaison's Office should so reflect.

In answer to your fourth question it is our opinion that if the partial veto is invalid, as we so hold, the bill **as passed** by the Legislature is valid and subsisting. A legislative enactment is not invalidated by an invalid attempt to partially veto it. **Miller v. Walley**, 122 Miss. 521, 84 So. 466; **Black, etc., Taxi Cab Company v. Standard Oil Company**, 25 Ariz. 381, 218 Pac. 139. We acknowledge that there is law to the effect that an invalid partial veto has the effect of invalidating the entire bill. However, we think the better rule is to the effect that the entire bill becomes law. **Dickson v. Saiz**, 62 N.M. 227 while not exactly in point has an interesting discussion of the point. By adopting {\*177} the rule that the entire bill becomes law at least the Chief Executive cannot defeat legislative intent by an unlawful act.

In regard to your fifth question we are advised by the Highway Department that it has not entered into any agreements pursuant to Chapter 65, Laws 1966 and further the question of Federal reimbursement under the Federal Highway Beautification Act of 1965 (23 USCA 131) is still in the discussion stages. Your fifth question therefore needs no answer at the present time.