

September 22, 2011 Advisory Letter--- Vetoed Appropriation to State Fair

September 22, 2011

The Honorable Sheryl Williams Stapleton
New Mexico State Representative
Box 25385
Albuquerque, New Mexico 87125

Re: Opinion Request – Vetoed Appropriation to State Fair

Dear Representative Stapleton:

You requested our opinion regarding the constitutionality of an appropriation to the New Mexico State Fair for the operation and administration of the African American Performing Arts Center located on the State Fair grounds. In particular, you reference Article IV, Section 16 of the New Mexico Constitution. The appropriation, which was included in the General Appropriations Act of 2011, 2011 N.M. Laws, ch. 179 (generally referred to as “HB 2”), was vetoed by Governor Susana Martinez.[1] As discussed below, we believe that the appropriation to the State Fair for the operation of the African American performing arts center was valid and consistent with Article IV, Section 16 of the New Mexico Constitution.

On April 8, 2011, Governor Susana Martinez signed HB 2 into law, with the exception of certain parts and items that she vetoed under Article IV, Section 22 of the state constitution. See House Executive Message No. 31 (Apr. 8, 2011). Among the items vetoed were certain appropriations to the New Mexico State Fair, including all amounts appropriated from the general fund for personal services and employee benefits, contractual services and other expenses. See HB 2, p. 90. The Governor left intact amounts appropriated to the State Fair from Other State Funds and Internal Service Funds/Inter-Agency Transfers. The Governor also vetoed the following legislative instructions:

The general fund appropriation to the New Mexico state fair includes three hundred forty-nine thousand three hundred dollars (\$349,300) for the operation of the African American performing arts center and exhibit hall at the New Mexico state fair.

The appropriations to the New Mexico state fair in the personal services and employee benefits category include sufficient funding for one full-time equivalent position for the African American performing arts center and exhibit hall at the New Mexico state fair.

Id.

In contrast to other vetoed items, the Governor's veto message does not explain her specific objections to the vetoed appropriations to the State Fair. See Executive Message, p. 2. In addition to specific objections for certain vetoes, the message describes general reasons for all of the items the Governor vetoed in HB 2, id. at 4-5. The general reasons include Article IV, Section 16, about which the message states:

Parts and items of the General Appropriation Act of 2011 would have nullified substantive law and/or created general legislation, practices generally precluded by Article IV, Section 16 of the Constitution of the State of New Mexico. Of particular concern were the Legislature's continuing efforts to enact reporting requirements and institute other means of Legislative and other oversight and control beyond what exists in substantive law. Also objectionable were efforts to impose substantive obligations on agencies beyond those contained in existing law.

House Executive Message No. 31, p. 4.

Your request focuses on the validity under Article IV, Section 16 of the vetoed general fund appropriation for the African American performing arts center. Article IV, Section 16 states, in pertinent part:

General appropriations bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools and other expenses required by existing laws.... All other appropriations shall be made by separate bills.

In addition to the requirements for general appropriations bills, the constitution provides in Article IV, Section 30: "Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

On its face, the appropriation in HB 2 for the African American performing arts center appears to have met the applicable constitutional requirements. As required by Article IV, Section 16, the appropriation was for an expense of the State Fair, which is part of state government. See NMSA 1978, § 16-6-1(A) (1994) (governor appoints members of the state fair commission with the advice and consent of the senate); § 16-6-5 (1991) (state fair commission is administratively attached to the tourism department); § 16-6-14 (1935) (state fair is a governmental instrumentality governed by the state fair commission). The appropriation properly specified the sum appropriated (\$349,300 of the total general fund appropriation to the State Fair) and the object to which the appropriation was to be applied (the operation of the African American performing arts center and exhibit hall at the State Fair).

This leaves the issue of the appropriation's compliance with Article IV, Section 16's mandate that general appropriation bills "embrace nothing but appropriations...." New Mexico courts have interpreted the limitation to prohibit the legislature from including general or substantive legislation in a general appropriations bill. See, e.g., *State ex rel.*

Coll v. Carruthers, 107 N.M. 439, 443, 759 P.2d 1380 (1988) (holding that language prohibiting a district attorney from spending appropriated funds for the rental of parking space was a legislative attempt “to enact policy which is better addressed by general legislation and is not suitable for inclusion in the general appropriations bill”). This does not mean, however, that a general appropriations bill is restricted to “bare appropriations.” State ex rel. Whittier v. Safford, 28 N.M. 531, 534, 214 P. 759 (1923). The legislature is permitted to include details of expending appropriations that are “necessarily connected with and related to the matter of providing for the expenses of government...” 28 N.M. at 531. “Matters which are germane to and naturally and logically connected with the expenditure of the moneys provided in the [general appropriations] bill, being in the nature of detail, may be incorporated therein.” Id. at 535. Accord State ex rel. Holmes v. State Bd. of Finance, 69 N.M. 430, 367 P.2d 925 (1961).

The language in the appropriation to the State Fair for the operation of the African American performing arts centers appears to be well within Article IV, Section 16’s parameters, as judicially construed. It is germane to, related to and directly and necessarily connected to the subject of the general fund appropriation, i.e. the expenses of the State Fair. The language designating \$349,300 of the general fund appropriation for the African American performing arts center is not general legislation outside the proper scope of a general appropriations bill. It does not affect matters beyond the appropriation in HB 2 or attempt to amend or delete substantive legislation.

For the same reasons, the appropriation to the State Fair for the African American performing arts center does not implicate the general concerns under Article IV, Section 16 stated in the Governor’s veto message (as quoted above). The language does not impose reporting requirements on the State Fair, require any oversight and control or impose new substantive obligations on the State Fair.

If we may be of further assistance, please let us know. Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Sincerely,

GARY K. KING
Attorney General

[1] The propriety of the Governor’s veto is beyond the scope of this letter. However, based on the information available to us at this time, we have no reason to believe that the veto exceeded the Governor’s constitutional authority. See N.M. Const. art. IV, § 22 (“governor may ... approve or disapprove any part or parts, item or items, of any bill appropriating money...”).