



Iowa General Assembly

2004 Legal Updates

Legislative Services Agency – Legal Services Division

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Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

THE CONSTITUTIONALITY OF THE GOVERNOR'S ITEM VETO OF PROVISIONS OF HOUSE FILE 692

Filed by the Supreme Court
June 16, 2004

Rants et al v. Vilsack, No. 60/03-1948

Background. At the start of the 2003 legislative session, the Governor called for the creation of an Iowa Values Fund, designed to stimulate the state's economic development efforts. The Governor requested that the General Assembly approve legislation creating the Fund, including a \$500 million appropriation. The leadership of the General Assembly sought to include with the Iowa Values Fund legislation changes to the tort liability system affecting punitive damages; remedies for workers' compensation; a reduction in income taxes; and the postponement of a phase-out of sales tax on residential utilities. The Governor opposed the inclusion of these measures in the Iowa Values Fund legislation. The Governor and General Assembly were unable to successfully negotiate a compromise during the regular legislative session.

As a result, the Governor called the General Assembly back into special session to continue work on the Iowa Values Fund legislation. Again, the Governor and General Assembly were unable to come to agreement. As a result, the General Assembly drafted and passed two bills, HF 683 (2003 Iowa Acts, First Extraordinary Session, chapter 2) and HF 692 (2003 Iowa Acts, First Extraordinary Session, chapter 1). HF 683 contained a \$45 million appropriation of state funds for the Grow Iowa Values Fund. HF 692 created the Grow Iowa Values Fund and created administrative apparatus for the management of the Fund, as well as regulatory and tax policy favored by the leadership of the General Assembly and strongly opposed by the Governor. A number of the regulatory and tax policy provisions in HF 692 were item vetoed by the Governor. In June 2003, the Legislative Council authorized the procurement of independent legal counsel to file a lawsuit challenging the constitutionality of the item vetoes.

The plaintiffs filed a motion for summary judgment to the Iowa District Court of Polk County seeking a declaration that the Governor's item vetoes of provisions of HF 692 were unconstitutional in that HF 692 was not an appropriation bill. The defendant filed a cross-motion for summary judgment seeking a declaration that HF 692 was indeed an appropriation bill subject to the Governor's item veto authority.

The District Court made the determination that HF 692 is an appropriation bill and denied plaintiffs' motion for summary judgment and granted the defendant's motion for summary judgment.

Supreme Court Proceedings and Decision. Immediately upon the District Court's ruling that the Governor's item vetoes were constitutional, the plaintiffs appealed and the Supreme Court expedited consideration of its appeal in light of the gravity of the questions presented. The Supreme Court determined that HF 692 did not contain any appropriation, thus making the Governor's item vetoes unconstitutional. The Supreme Court further decided that the Governor failed to approve HF 692 during the 30-day period allowed him, thus the bill did not become law.

Analysis. The Supreme Court ruled that for purposes of determining if a bill is subject to item veto the court must examine the bill itself and rejected the Governor's contention that the court should consider bills that are related to it. In determining HF 692 did not contain an appropriation, the Supreme Court utilized the reasoning set out in *Junkins v. Branstad*, 448 N.W. 2d 480 (Iowa 1989), which held that an appropriation occurs if there is an allocation of funds, whether from the General Fund or a revenue-producing bill, into a separate and distinct fund which can only be used for other

purposes upon subsequent legislation. The Supreme Court examined the following provisions of HF 692 which the District Court determined were appropriations and found them not to be appropriations:

- Payments of interest, loan repayments, failed loans and grants, and the nonreversion of fund balance as these relate to the Grow Iowa Values Fund — This section does not involve the allocation of funds by either directly ordering an expenditure or commanding alterations to standing allocations in the Code which results in expenditure of funds absent subsequent legislation to stop the expenditure or redirect it. Instead the section requires further legislative action not in the bill to make the section functional.
- Providing for compensation and expense payments for members of boards created in HF 692 — Provisions for such payments only called for such payments to be budgeted and no funds are allocated to fulfill these budgeted items.
- Increased assessment for failure of employers to provide certain information with such assessment allocated to Second Injury Fund — Such assessments are possibilities and contingent on matters outside of the bill and do not allocate funds by directly ordering expenditure or altering a standing allocation in the Code resulting in the expenditure of funds absent subsequent legislation to stop or redirect the expenditure.
- Extension of the Administrative Contribution Surcharge to be deposited into the Administrative Contribution Surcharge Fund — The section does not order an expenditure or affect a standing allocation because any allocation from the fund is dependent on subsequent legislative action.
- Alterations to state tax code to reduce income tax rates — Reduction in state revenues is not an allocation of funds.

Because none of the provision relied on by the Governor were appropriations, the Court stated that there is no need to determine the further questions of whether such provisions significantly affect the Governor's budgeting responsibility and whether any item vetoed provision was not an item that could be item vetoed.

The Supreme Court further stated that contrary to the presumption of both parties, the unconstitutional item vetoes did not automatically become law. The Court said that under Iowa's Constitution a bill including unconstitutional item vetoes may become law if the bill was presented to the Governor prior to the last three days of a session and if the Governor failed to return the bill within three days. However, in the case of a bill presented to the Governor within the last three days of a session, the Governor must sign it within 30 days before it may become law. The Court held that because the Governor did not approve all of the provisions of HF 692, since the unconstitutional item vetoes were not approved, within the 30-day limit, the result "is to render things as though no provision of HF 692 passed into law."

Affect on Item Veto Power. Although the case involved a bill determined by the Supreme Court to be a nonappropriation bill, the reasoning of the case may extend to appropriation bills as well. For example, if a provision of a bill determined to be a valid appropriation bill for item veto purposes was item vetoed and transmitted to the Governor during or after the last three days of session, and that item veto was ruled unconstitutional for any reason, would the entire appropriation bill fail to become law because the Governor did not approve the bill within the 30-day period as required by the Constitution? If the General Assembly presented such a bill to the Governor before the last three days of a session, this reasoning would not apply and presumably an unconstitutional veto of a provision of the bill would become law despite the Governor's lack of approval. The application of the Supreme Court's reasoning therefore would place at greater peril those bills transmitted to the Governor during or after the last three days of a session.

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