WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO: S-357

CONSTITUTION OF 1970:
Amendatory Veto

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Honorable W. Russell Arrington
Senator - Illinois State Senate
135 South LaSalle Street
Chicago, Illinois 60603

Dear Senator Arrington:

Your letter of September 16 stated the Governor had returned a number of bills "with specific recommendations for change" pursuant to Article IV, Section 9e of the 1970 Constitution. You asked my opinion on the following:

1. Assuming in each instance the Governor's veto message recommends changes in the specific language and form of an amendment to a bill as originally enacted, and further assuming that the Governor certifies that the "acceptance" by the General Assembly conforms to his specific recommendations, will such bill become law if the General Assembly has altered such specific recommended language:

   (a) to correct a typographical error in the veto message; and

(b) to correct an error as to the form of the proposed amendment to the bill in the veto message; and

(c) by an addition to the change recommended by the Governor; and

(d) by a deletion of a portion of the change recommended by the Governor; and

(e) to effect a different change in the substantive law, in conflict with the Governor's recommendations.

2. Please answer each part of the foregoing question assuming, in each instance, that the Governor refuses to certify that the "acceptance" by the General Assembly conforms to his specific recommendations.

3. Assuming the Governor's veto message recommends changes in the specific language and form of an amendment to a bill as originally enacted, and further assuming the Governor refuses to certify that the "acceptance" by the General Assembly conforms to his specific recommendations, will such bill become law if the General Assembly does not alter such specific recommended language in accomplishing its "acceptance."

4. If the Governor's veto message specifically recommends changes in general terms only, to what extent (if any) is it within the province of the General Assembly to alter, add to or detract from such recommended changes:

(a) if the Governor certifies that the "acceptance" by the General Assembly conforms to his specific recommendations; and

(b) if the Governor refuses to so certify.

The applicable constitutional provision - Article IV, Section 9(e) - reads as follows:

> "The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated. (Emphasis added)

Your first two questions cover situations where the "acceptance" by the General Assembly is qualified as set out in sub-paragraphs (a) through (e) inclusive. Question No. 1 asks the effect of the 5 qualified acceptances in case the Governor certifies that the "acceptance" by the General Assembly conforms to his specific recommendation, and question No. 2 asks the effect when the Governor refuses to certify the acceptance conforms to his specific recommendations.

The answers to your questions require an analysis of the language of the Constitution to determine the exact powers granted to the Governor and to the General Assembly, and the express limitations, if any, on those powers. The key words to consider are "specific", "accept" and "conform".

The sole powers given to the Governor are to "return a bill together with specific recommendations", later to certify "such acceptance conforms to his specific recommendations" or if he does not so certify to "return it as a vetoed bill". The sole powers granted to the General Assembly are to override the Governor "in the same manner as a vetoed bill" or to accept the "specific recommendations * * * by a record vote of a majority of the members elected to each house" and then present the bill again to the Governor for further action.

The letter of the Governor in returning a bill with specific recommendations for change is referred to on page 9 of the Official Explanation as an "amendatory veto" and in your letter as the "Governor's veto message". If the General Assembly fails to accept the recommended changes and so cannot present the bill as changed to the Governor, his message stands as a final veto, unless the General Assembly overrides the veto by a 60% vote of the elected members of each house. Your letter does not involve the power of the General Assembly to override a veto but relates only to situations where the changes were accepted at least in part, and the bill then presented again to the Governor. This opinion accordingly

will consider only your power to act on the recommendations made.

A constitutional provision should be read and understood according to the natural and obvious import of the language used, without resort to subtle and forced construction for the purpose of limiting or extending its operation. (Austin vs. Healy, 376 Ill. 633.) Our Supreme Court has established the following propositions: (a) that the Illinois Constitution is to be liberally construed; (b) that the meaning of constitutional language is best ascertained by considering the purposes of the disputed provision; (c) that such a provision should be construed to give effect to the spirit in which it was adopted; (d) that narrow, technical reasoning should not be applied; and (e) that which is within the intention is within the provision even if not within the letter. Wolfson v. Avery, 6 Ill. 2d 64, at 93-94 (1955); People ex rel Rogerson v. Crawley, 274 Ill. 139, 142-143, (1916); People v. Vickroy, 266 Ill. 384, 390, (1915); People ex rel. Gaines v. Garner, 47 Ill. 246, 253 (1868); People ex rel. Stickney v. Marshall, 6 Ill. 672, at 682, 689 (1844).

In Cooley's Constitutional Limitations (8th Ed.) page 128, the rule of construction is stated as follows:

"* * * The rule applicable here is, that effect

> is to be given, if possible, to the whole instrument, and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory.
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> "This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, leaving as little as possible to implication. It is scarcely conceivable that a case can arise where a court would be justified in declaring any portion of a written constitution nugatory because of ambiguity. One part may qualify another so as to restrict its operation, or apply it otherwise than the natural construction would require if it stood by itself; but one part is not to be allowed to defeat another, if by any reasonable construction the two can be made to stand together. Every provision should be construed, where possible, to give effect to every other provision." (Emphasis added)

Webster's, and other standard dictionaries define the key words mentioned above as:

specific - constituting or falling into a named category; precisely formulated or restricted; specifying; definite or making definite; explicit; of an exact or particular nature.

accept - to assent to; to receive with consent; to give admittance or approval to.

acceptance - to receive what is offered with approbation or acquiesence.

conform - to bring into harmony or agreement; to be similar or identical; to adapt; to correspond; to show identity or resemblance; to make the same or similar to.

Unequivocal answers, as set out hereafter, can be made to your questions 2, 3 and 4. My only concern is with question number 1 as to the extent of the modification, if any, which could be made by the General Assembly to the Governor's recommendations. My opinion, for the reasons set out immediately below, is that there should be some corrective ability. However, the debates in the Constitutional Convention as referred to hereafter, indicate the delegates intended no flexibility and that no modification could be made.

Under the authorities quoted above, it is necessary to give effect to all of the key words rather than adopt an interpretation which would give undue effect to one or more of them and little if any or no effect to others. Under that rule and under the doctrine that what is within the spirit, if not the letter, of a provision should be upheld, it would seem that the General Assembly should not be limited to

"acceptance" of a "specific recommendation" as precisely formulated or restricted but would have some latitude since the Governor might feel that the acceptance, even though somewhat modified, came within the spirit if not the letter of his recommendations. He would then be able to certify that the acceptance "conforms" to his recommendations, as being similar, in harmony and agreement, or as resembling or corresponding to them. To hold otherwise would ignore the use of the special word "conform". The section does not say the Governor must certify the General Assembly had "accepted", (in the literal word for word sense) his recommendations, but only that the "acceptance conforms" to his recommendations.

Under that interpretation, a change in form or substance which did not conflict with the spirit of the Governor's recommendations should constitute proper legislative response and acceptance by the General Assembly, and afford a basis for a valid certificate by the Governor. The Governor's certificate finding such acceptance conformed to his recommendations would then be conclusive of the matter and constitute adoption of the bill.

That interpretation would seem to be supported by

the evident purpose of Section 9(e) of Article IV and the evil it sought to cure. Reading the section itself shows it was clearly intended to avoid the delays and costs incident to legislative failures resulting from the old veto practice. Under the Constitution of 1870, if the Governor was unwilling to accept the bill exactly as submitted to him he had no recourse except outright veto. This sometimes resulted in a two year delay before much needed legislation could be re-introduced and passed and at increased cost and great waste of legislative time.

It is evident the Constitutional Convention intended to substitute for the old restricted veto power a plan under which legislation could be changed to the satisfaction of both the General Assembly and the Governor and could be upheld. Such a plan is practical, constructive, progressive and modern and could prove of inestimable value to the State in savings of time and costs. Such worth-while objectives should not be thwarted by an interpretation which puts both the Governor and the General Assembly in a straight jacket of word definitions.

The flexible interpretation discussed above which seems supported not only by the evident purpose of the section

to remedy an evil, but also by the doctrine that constitutional language is to be liberally construed, that narrow technical reasoning should be avoided, that effect should be given to the spirit in which the section was adopted, and that what is within the intention, if not within the letter, of a provision should be upheld. In view of the evident purpose of the section, its special wording, and giving effect to the several rules discussed above on constitutional construction it is my opinion that a flexible interpretation, as outlined above, could well be upheld by the courts.

We must recognize however that in addition to the six grounds mentioned above for construction of a disputed constitutional provision our Supreme Court has said the deliberations and debates in the Convention and the understanding of the electors must also be considered.

In construing the language of a constitutional provision, our Supreme Court stated one object of inquiry is the understanding of the voters who adopted the instrument and in that connection emphasizes the importance of the debates and of the explanations given. In Wolfson v. Avery, 6 Ill. 2d 78 at page 88, the Court said:

> "* * * Since the language to be construed is a constitutional provision, the object of inquiry is the understanding of the voters who adopted the instrument. In this connection it is appropriate to consider the historical background for the inclusion of section 3 and the debates of the members of the convention, as well as explanations of the provision published at the time. As we stated in Burke v. Snively, Ill. 328, at 344-345: 'In construing constitutional provisions the true inquiry is, what was the understanding of the meaning of the words used by the voters who adopted it? Still, the practice of consulting the debates of the members of the convention which framed the constitution, as aiding to a correct determination of the intent of the framers of the instrument, has long been indulged in by courts as aiding to a true understanding of the meaning of provisions that are thought to be doubtful.'"

The understanding of the "electors" on this section cannot be determined as readily as in the Wolfson case. However, the official Explanation of the Convention on page 9 states the section "refines the power of a Governor to veto a bill". It explains the amendatory "veto" allows the Governor to return the bill with his objections to it and suggestions for change.

To most people the natural and obvious meaning of the verb "suggest" is "to bring or put forward for consideration, action or approval; propose; to give a hint or indirect indication of; to intimate". Most people understand a "suggestion"

means "something suggested, a hint, or insinuation." It cannot be argued that the electors would construe the word "suggestions" as requiring a literal "word for word" adoption or as denying any possibility of modification. So the electors must have concluded flexibility in reply was permissible.

The Convention's transcription shows considerable discussion whether 9(e) permitted changes in the Governor's language. Some confusion exists because the original language covered "suggestion", the answers often referred to the "Governor's amendments", while the final draft refers only "recommendations".

To illustrate, the committee chairman at one point, page 351 said: "* * * we precluded any changes by the Legislature * * *. We wanted to avoid the ping pong or so-called ping pong effect. * * * There is no further action to be taken by the Legislature by way of changing his amendment or adding something else to it."

Several pages later one of the delegates (pages 360 and 361) said:

> "I think that his point is well taken that the language does not specify that the revision or the Legislature acceding to the Governor has to be exact,

> and I think this could be solved by in line 4 and in line 9, changing the word "suggestions" to "amendments". Then if they don't agree to the specific amendment, it is fairly easy to see that they have not agreed to his amendatory veto and you cannot certify it.
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> However, the interpretation of the words "conforming to his suggestions" I think is wide open, and they can conform to the spirit of his suggestions while not conforming to the specific law, requirements as it were of his suggestion. I think some consideration should be given to changing the word "suggestions" to "amendments'".

One of the members of the Committee that drafted the provisions responded at page 361:

> "I am sure we are open to any language which might give us more precision in the thoughts that we have on the subject, and I think Style and Drafting would be the appropriate place and body to discuss that."

However the definite word "amendment" was not adopted. The final draft used the word "recommendations". Had the word "amendment" been adopted as suggested, the intent of the Convention would have been much more definite.

The comments made herein above have analyzed the eight grounds which are customarily used in construing disputed constitutional provisions. Seven of the eight grounds either support the theory of flexibility of language or at

least do not negate that theory.

The only one of the grounds which definitely supports the non-flexible theory, is that found in the debates of the Convention. As noted above, the Convention itself failed to adopt the word "amendment" which would have been very definite. The Explanation given to the public by the Convention was merely that the Governor could submit "suggestions".

If all of the grounds for constitutional construction are to be ignored except the intention indicated by the debates, then no flexibility would be permitted and the General Assembly could make no modification whatever of the Governor's recommendations.

If that interpretation is the sole one which can be entertained by the General Assembly or which would receive support in the courts, then my answers to the five sub-paragraphs of section 1 would be as follows:

(a) If typographical errors only were corrected it is unlikely that anyone would raise an objection, and if one should be raised it is unlikely it would be entertained by any court.

(b) If the change made had no substantive effect on the Governor's recommendations but was mechanical only and to conform to proper legislative procedure, it is unlikely that a

a question would be raised. However, if a question were raised, the Court, under the theory of no flexibility whatever, would probably rule against the change.

(c), (d), (e) Under the theory of no flexibility whatever the answer to each of your questions 1(c), 1(d) and 1(e) must be in the negative.

Questions 2 and 3 both request my opinion on situations where the Governor refuses to certify the changes made conform to his specific recommendations. Whether the acceptance is qualified as in sub-paragraphs (a) through (d) inclusive, or conforms exactly to his specific recommendation, as in question number 3, the answer is the same. Refusal by the Governor under any circumstances or for any reason to certify conformity with his recommendations prevents the revised bill from becoming law. In such event it is the Governor's duty to return the revised bill as a vetoed bill to the house in which it originated.

Your Question No. 4 requests my opinion in a situation where the Governor recommends changes in general terms only. The language of Section 3(e) indicates the Constitutional Convention contemplated the Governor's message would have a substantial degree of specificity. His duty is to make "specific recommendations". If the recommendations are not

sufficiently specific for acceptance, the General Assembly has the right to seek clarification and endeavor to effect compliance. If the General Assembly, without further clarification, should adopt a change consistent with the general terms of his message and the Governor certifies conformity as set out in Question 4(a) the revised bill becomes law. If he refuses to so certify, the answer above to Questions 2 and 3 is applicable.

As noted above, Section 9(e) must be construed as a whole and effect be given to each word. Section 9(e) cannot however be used to circumvent or defeat other specific constitutional provisions. The amendatory veto process requiring only a majority vote for acceptance cannot be used to adopt any statute requiring a 3/5 vote either in respect to its passage or the date when it was to become effective.

Very truly yours,

A T T O R N E Y G E N E R A L