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SUPREME COURT, STATE OF COLORADO

Case No. 84 SA 79

OPENING BRIEF

Appeal from the District Court of the City and County of Denver
Civil Action No. 82CV9345
Honorable HAROLD D. REED, Judge

THE COLORADO GENERAL ASSEMBLY,

Plaintiff-Appellee,

v.

THE HONORABLE RICHARD D. LAMM, Governor,

Defendant-Appellant.

DUANE WOODARD
Attorney General

CHARLES B. HOWE
Chief Deputy Attorney General

RICHARD H. FORMAN
Solicitor General

Attorneys for Defendant-Appellant

1525 Sherman Street, 3d Floor
Denver, Colorado 80203
Telephone: 866-3611

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This opening brief is submitted on behalf of defendant-appellant Governor Richard D. Lamm by his attorney, Duane Woodard, attorney general for the State of Colorado.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. When executive vetoes were sustained because the general assembly failed to override or did not even attempt to override, does the general assembly have standing to challenge those vetoes and consequently does the complaint fail to raise justiciable issues?

2. Were certain asterisked conditions enacted in appropriations bills void as unconstitutional attempts to administer the appropriation or to enact substantive law in an appropriation bill, and consequently did the district court err by reaching the question whether such asterisked conditions were "items" subject to the item veto power?

3. Alternatively, did the Governor properly exercise his constitutional item veto power to strike the specified asterisked conditions from appropriation bills?

STATEMENT OF THE CASE

A. The nature of the case

This lawsuit is the third in a series of lawsuits recently brought by the Colorado General Assembly to challenge the Governor's exercise of executive powers relating to the executive budget. The first two lawsuits involved issues of the transfer and spending pow-

ers of the Governor and are presently on appeal before this court in Case No. 83SA381. The instant appeal raises additional questions concerning the constitutional separation of powers between the legislative and executive branches which arise from the Governor's vetoes of portions of two appropriations bills enacted in 1982.

The provisions vetoed were portions of the 1982 general appropriation bill, commonly known as the "Long Bill," and a supplemental appropriation bill which amended the 1981 Long Bill appropriation to the Department of Administration. The challenged vetoes deleted several provisions which purported to restrict appropriations, including certain head notes, certain asterisked conditions and certain footnotes. The issues presently on appeal concern only executive vetoes of certain asterisked conditions which were contained in the body of those appropriation bills.

This appeal is taken from the district court's order deciding the Governor's motion to dismiss the complaint and the general assembly's motion for summary judgment. The district court concluded that certain claims raised in the complaint could be resolved finally as a matter of law and certified final judgment as to those claims for immediate appeal pursuant to C.R.C.P. 54(b). Of those claims, the issues relating to the Governor's vetoes of the asterisked conditions were determined adversely to the Governor and this appeal was taken. In another portion of its order certified as final, the district court determined that the general assembly lacked standing to challenge the veto of footnotes in the Long Bill. No appeal was taken from that final judgment. A third claim was de-

terminated to raise issues of fact and has been set for trial.

B. The course of proceedings

The general assembly filed the complaint in November of 1982 challenging specified vetoes and seeking declaratory judgment and future injunctive relief. Several other executive branch officers and employees were named as defendants but subsequently were dismissed. The Governor responded to the complaint by filing a motion to dismiss. The central contention of this motion was that the challenged vetoes had struck provisions which were included in the appropriations bills in violation of the Colorado Constitution and were therefore void. He also argued that the general assembly lacked standing and the complaint failed to raise justiciable issues. As a consequence, the Governor argued, the court should not even reach the issue whether the vetoed provisions were "items."

The Governor's motion to dismiss was briefed and at issue on March 29, 1983. On April 15, 1983 a pretrial conference was held between the parties and Judge Harold D. Reed. At that conference the general assembly represented that it intended to file a motion for summary judgment. Over the objection of defendant's counsel the district court decided to postpone consideration of the motion to dismiss until such time as it could also consider plaintiff's motion for summary judgment.

Subsequently, plaintiff's motion for summary judgment was filed and briefed. On July 21, 1983 a hearing was held before Judge

Reed on the issues raised by both motions. The court determined the issues of standing and justiciability in plaintiff's favor and took the remaining issues under advisement.

On January 17, 1984 Judge Reed issued his written findings, conclusion and judgment (the "January 17 order") in which he expressly divided the claims, entering final judgment as to some and making a certification as required by C.R.C.P. 54(b). Specifically, the court concluded that those portions of the complaint which challenged the Governor's veto of specified footnotes in the 1982 Long Bill constituted a separate claim for relief. The court held that the general assembly lacked standing to raise that claim because the vetoed footnotes were not legally binding upon the executive branch but simply constituted a statement of legislative intent which should not be part of the Long Bill.

The court then determined that the portions of the complaint which challenged executive vetoes of asterisked conditions contained in the appropriation bills also constituted a separate claim for relief. The court concluded that the general assembly was entitled to declaratory judgment on that claim as a matter of law, that there were no disputed issues of fact and therefore entered summary judgment. The court declined to order future injunctive relief. As to both these claims for relief the court expressly determined that there was no just reason for delay and certified those judgments as final pursuant to C.R.C.P. 54(b). See the January 17 order, R. 425.

In the January 17 order the district court further held that other portions of the complaint set forth a separate claim concern-

ing the Governor's veto of a headnote which attempted to subject federal block grant funds to legislative appropriation. This claim raised genuine issues of fact, the court decided, which must be resolved at trial.

On February 16, 1984 the Governor filed his notice of appeal from that portion of the January 17 order which entered judgment for plaintiff that the Governor's vetoes of the asterisked conditions were improper. No appeal was taken by the general assembly from that portion of the January 17 order which entered judgment in favor of the Governor as to the vetoes of footnotes in the 1982 Long Bill. Trial is set for September on the remaining claim for relief.

C. Statement of facts

The issues raised by this appeal were decided on the basis that there were no disputed factual issues. The complaint incorporates by reference copies of the two appropriation bills and the Governor's veto messages relating to those appropriation bills. R. 13-195. The bills and veto messages may also be found in the 1982 Colorado Session Laws.

The 1982 Long Bill was adopted by both houses of the general assembly on April 21, 1982 and delivered to the Governor in accordance with art. IV, sec. 11 of the state constitution. On May 6, 1982 the Governor approved the Long Bill with certain exceptions, filed the bill with the secretary of state and transmitted his message of partial approval to the State House of Representatives. On

May 24, 1982 the House of Representatives considered the provisions vetoed by the Governor in paragraphs 1, 2, and 16 of his veto message and failed to override the vetoes by the necessary two-thirds vote. The general assembly did not consider repassing any other provisions vetoed by the Governor. Complaint, R. 3.

In March of 1982 the general assembly passed House Bill No. 1261, a supplemental appropriation bill which amended the appropriation to the state Department of Administration made in the 1981 Long Bill. House Bill No. 1261 was presented to the Governor who vetoed certain provisions in that bill. On April 20, 1982, the House of Representatives considered the Governor's veto of provisions of House Bill No. 1261 and failed to override the veto by the necessary two-thirds vote. Complaint, R. 9-10.

The challenged vetoes which are at issue in this appeal all were directed at provisions set out in asterisked conditions included in the text of the two appropriation bills. Each will be discussed individually in argument III, where copies are incorporated in the brief.

SUMMARY OF THE ARGUMENT

The general assembly sustained the challenged vetoes by failing to repass the vetoed provisions with the approval of two thirds of both houses. Consequently it lacks standing to seek judicial review of the vetoes and the complaint fails to raise justiciable issues.

If the vetoes are subject to judicial scrutiny, this inquiry should be directed first to whether the vetoed provisions were constitutionally enacted by the general assembly. If not constitutionally enacted, the legislature is precluded from attacking the propriety of the Governor's exercise of the item veto.

When examined individually, the asterisked conditions vetoed by the Governor were unconstitutional either as interference with executive administration of the budget or as the enactment of substantive law in an appropriations bill. Alternatively, the contents of the asterisked conditions were separate and distinct items subject to the item veto power.

ARGUMENT

I.

THE COMPLAINT FAILS TO RAISE JUSTICIABLE ISSUES.

Article IV, section 12 of the Colorado Constitution confers the item veto power on the Governor, but also authorizes the general assembly to override item vetoes in the event that it disagrees with the Governor's action. That section provides as follows:

Section 12. Governor may veto items in appropriation bills - reconsideration. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be law, and the item or items disapproved shall be void, unless enacted in manner following: If the general assembly be in session, he shall transmit

to the house in which the bill originated a copy of the item or items thereof disproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Article IV, section 11 specifically provides for repassage of an item over an executive veto if approved by a two-thirds vote of both houses. It is undisputed that the general assembly attempted to repass only two of the seven asterisked conditions which are at issue in this appeal. Those two attempts failed to obtain the necessary vote of even one house. Complaint R. 3,9.

The doctrine of standing requires that before this court will undertake judicial review, plaintiff must establish that it "has suffered injury in fact to a legally protected interest...." Wimberly v. Ettenberg, 194 Colo. 163, 570 P.2d 535 (1970). The general assembly may not attack the constitutionality of the Governor's exercise of his veto power except to the extent it is adversely affected by the alleged unconstitutional activity. See Augustin v. Barnes, 626 P.2d 625 (Colo. 1981). Since the general assembly already has a remedy to redress allegedly unconstitutional vetoes, it fails to demonstrate either injury in fact or a legally protected interest.¹/

In analogous circumstances, courts in other jurisdictions have declined to intervene in what are principally political disputes. The federal courts have regularly refused to hear cases brought to circumvent the political process and to gain relief

which was available to plaintiffs on the floor of the Congress. The grounds relied upon to dismiss such cases have included lack of standing, ripeness, political question or separation of powers. See Riegle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir. 1981); Goldwater v. Carter, 617 F.2d 697 (D.C. Cir. 1979, judg. vacated, 444 U.S. 996 (1979) (mem.); Edwards v. Carter, 580 F.2d 1055 (D.C. Cir. 1978), cert. denied, 436 U.S. 907 (1978); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); McGowan, Congressman in Court: The New Plaintiffs, 15 Ga. L. Rev. 241 (1981). The inherent risk in such cases is that where relief would be available in the legislative process, judges are presented not with the opportunity to mediate between the two political branches, but with the possibility of allowing a plaintiff to circumvent the processes of democratic decision making. See 15 Ga. L. Rev. at 251.

Under circumstances similar to the instant lawsuit, this court has declined to decide the constitutional question whether certain executive vetoes were timely returned to the legislature. In that case the general assembly had the opportunity to reconsider the vetoed measures, but failed to repass them. In Re Interrogatories, Senate Resolution No. 5, 195 Colo. 220, 578 P.2d 216 (1978). In effect, the court's conclusion there recognized that the general assembly should not be able to obtain judicial relief setting aside a veto where by its own legislative action, or inaction, it had sustained the veto.

Where the general assembly has failed to repass an appro-

priations provision over an executive veto, judicial review of the sustained veto risks thwarting the normal legislative processes. Where the general assembly has chosen to not even consider repassage over a veto, the risks of judicial intervention is no less.

II.

EXECUTIVE VETOES OF APPROPRIATION BILL PROVISIONS HAVE BEEN UPHELD ON ALTERNATIVE GROUNDS WHERE THE PROVISION WAS UNCONSTITUTIONAL OR WHERE THE PROVISION WAS AN "ITEM."

This portion of the brief will discuss the general principles of law which are relevant to a decision whether the Governor properly vetoed the asterisked conditions. In argument III these general principles will be applied to the specific provisions at issue in this appeal.

A. If the appropriation bill provisions vetoed by the Governor were unconstitutional legislative enactments, those provisions were null and void and it is unnecessary to consider whether the Governor properly exercised his item veto power.

If the vetoed appropriation bill provisions were constitutionally invalid, the general assembly is precluded from challenging whether the Governor correctly exercised his item veto power. Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978); MacManus v. Love, 179 Colo. 218, 499 P.2d 609 (1972). The dis-

strict court erroneously concluded in the January 17 order that he was required to decide whether a vetoed provision was an "item" without first considering whether that provision was constitutionally enacted.

This principle is directly addressed in the following statement made in the Anderson decision:

This court is only presented with the issue of whether the district court was correct in determining that the vetoed portions of the Long Bill were constitutionally invalid, thus precluding the appellants from bringing a challenge to the validity of the Governor's veto of these provisions.

195 Colo. at 441. Emphasis added. In the MacManus decision, even though an argument was made on appeal that the Long Bill provision in question was not an "item" subject to veto, this court concluded:

We do not reach the question in the light of our ruling that the limitation was void, irrespective of a veto.

179 Colo. at 222. (Emphasis added.)

The initial inquiry in this appeal must be whether the asterisked conditions at issue were lawful legislative enactments. If not, under the rulings in Anderson and MacManus this court's inquiry is completed. Only if the court concludes that any of the vetoed provisions were enacted constitutionally, then must it go on to consider whether those provisions were subject to the Governor's item veto power.

The consequences of this court's analysis in the Anderson and MacManus rulings are not without significance. In those de-

cisions this court could have anticipated the reasoning of the district court in the January 17 order and concluded that even if certain provisions were unconstitutional legislative enactments in an appropriation bill, the Governor was foreclosed from raising the question of validity because he may only veto "items." If that reasoning had prevailed, the unconstitutional provisions which were not "items" would have remained part of the law as passed by the general assembly. Had that result occurred, affected state agencies would have been forced to choose between following the unlawful dictates of the legislature or ignoring those provisions at the risk of legislative retribution in the next budget review cycle. This increased strain on the separation of powers between legislative and executive branches was avoided by the Anderson and McManus decisions. Increased tension again becomes a possibility if the district court decision below is affirmed.

1. An appropriation bill may not include conditions which constitute interference with the executive power of administration nor may it contain provisions of substantive law.

Article III of the Colorado Constitution preserves the separation of powers among the three branches of government. In the Anderson decision legislative encroachment upon the executive branch was held to occur under the following circumstances:

1. A Long Bill condition interferes with the executive

power to administer appropriated funds, including the making of specific staffing and resource allocation decisions; and

2. Conditions attached to the Long Bill purport to reserve to the legislature "powers of close supervision which are essentially executive in character."

Specific provisions held in Anderson to be void for these reasons were: A condition which allocated funds on the basis of a required number of full-time employees (FTEs) which the general assembly believed each recipient agency should have and provisions which conditioned executive agency expenditures upon reports to, and approval by, the Joint Budget Committee of the general assembly.^{2/}

Article V, section 32 of the Colorado Constitution requires that the general assembly not include substantive legislation in an appropriation bill, nor use the Long Bill to amend or repeal a statute. ^{3/} Anderson v. Lamm, supra; Burciaga v. Shea, 187 Colo. 78, 530 P.2d 508 (1974); People ex rel. Clement v. Spruance, 8 Colo. 307, 6 P. 831 (1885). The sole purpose of the Long Bill is to meet charges already created against public funds by affirmative acts of the general assembly. In Re House Bill No. 168, 21 Colo. 46, 39 P. 1096 (1895). The Long Bill is to be used only to provide funds for programs separately authorized and specifically detailed in other bills. Anderson v. Lamm, supra.

In Anderson specific conditions held void as attempts to enact substantive legislation were:

1. A requirement that appropriations to executive agen-

cies were contingent upon monthly reports to the Joint Budget Committee;

2. A directive that funds be transferred from a division of the executive Department of Social Services to the Legislative Audit Committee of the general assembly for purposes of having that committee contract for study of the executive agency program; and

3. A condition that funds appropriated to the Division of Community Colleges not be used to implement collective bargaining procedures prior to legislative approval.

Provisions in an appropriation bill which constitute either a violation of the separation of powers or enactment of substantive law are void as a matter of law and the Governor's vetoes of such provisions are not subject to challenge. The asterisked conditions must first be scrutinized under these principles before inquiry turns to the constitutionality of the Governor's exercise of the item veto power.

2. The Governor's constitutional item veto power must be defined in terms of the constitutional concerns it was intended to protect.

The Governor's constitutional item veto power has not been the subject of very much controversy. Only once has this court had occasion to discuss what was intended by the article IV, section 12 reference to "any item or items." See Stong v. People ex rel. Curran, 74 Colo. 283, 220 P. 99 (1923). That case was de-

(X)

cided under circumstances where the Governor attempted to reduce the amount of an appropriation for the salary of a state official from \$7,000 to \$5,250. This court concluded that the appropriation of a specific amount for a salary constituted "a single item, distinct, separate and indivisible." 74 Colo. at 291.4/ It ruled that the veto was improper, reasoning as follows:

Article IV, section 12, grants the power to veto an item, but no power to veto a part of an item unless consideration of the purpose of the section and the evils at which it was aimed make such a construction indispensable to effectuate it.

74 Colo. at 290.5/ (Emphasis added.)

Determination of what is an "item" properly subject to veto must involve an examination of the practical effect of the vetoed provision in light of the constitutional purpose that a governor should not be required to accept objectionable legislation as a condition of the funding of a desirable program.6/ The Stong case quotes approvingly the warning language in Commonwealth v. Barnett, 199 Pa. 161, 48 A. 976 (1901):

If the Legislature, by putting purpose, subject, and amount inseparably together, and calling them an "item" can coerce the Governor to approve the whole or none, then the old evil is revived which this section was intended to destroy.

220 P. at 1002, 1003.

The Stong decision provides guidance as to the fundamental principles which underly the constitutional grant of legislative power to the Governor to veto items in an appropriation bill. It does not, however, provide an answer to the question of what is

an "item" in the context of much more complicated appropriation bills adopted in 1982. The next portion of this brief will address the specific circumstances of the vetoed provisions at issue in this appeal.

III.

EACH ASTERISKED CONDITION MUST BE EXAMINED
INDIVIDUALLY FOR CONSTITUTIONAL SUFFICIENCY
OR TO DETERMINE IF IT IS AN ITEM SUBJECT TO
VETO.

A fundamental mistake made by the district court was to lump together all the asterisked conditions without examining the actual effect each would have had on the executive branch if not vetoed. In this respect the district court erroneously accepted the legislative characterization of these conditions. In this argument each of the asterisked conditions at issue will be examined in order to demonstrate that each was either void as an unconstitutional legislative condition upon appropriations or properly was subject to the Governor's item veto power.

A. A restriction on the source of cash funds to be used for personal services constituted legislative interference with executive administration of the budget.

In paragraph 2 of his veto message, the Governor vetoed an asterisked condition which restricted an appropriation of cash funds to the executive director of the Department of Administration. R. 175. In his message the Governor explained that the

~~SECRET~~

condition was vetoed because it represented an attempt by the general assembly to administer the appropriation by restricting the source from which the Department of Administration could obtain the cash funds to be expended under the appropriation. R. 175. The asterisked condition attempted to limit a cash fund appropriation to only one source, providing: "These funds shall be from agency indirect costs." The appropriation and the related asterisked condition are set forth on exhibit A to this brief.

Cash funds are distinguished from general fund moneys in the appropriation process because they are moneys which an executive agency receives from a variety of sources in the course of performing its statutory duties.^{7/} One of these sources may be reimbursement of agency indirect costs, that is, costs incurred by one executive agency in providing services to another agency, but which cannot be directly attributed to a particular service and recovered in the price of that service. Indirect costs are calculated and allocated among state agencies according to plans which are required by fiscal rules promulgated by the state controller, an executive officer. See Fiscal Rules -- Accounting and Reporting Policies, 1 C.C.R. 101-5, section 6. Allocation of indirect agency costs is made by the state controller after those costs are known. Consequently actual allocations to a particular agency may differ significantly from legislative estimates made well in advance of the fiscal year in which indirect costs are known and reimbursed.

The general assembly makes an appropriation when it sets

out "purpose, subject and amount." See Stong v. People ex rel. Curran, supra. In this instance the purpose is personal services for the executive director, the subject is cash funds received by the Department of Administration and the amount is \$275,580. See exhibit A. At that point the work of the general assembly is completed and the executive responsibility to manage the appropriation begins. Anderson v. Lamm, supra. Executive administration of the appropriation necessarily requires the executive branch to decide how cash is to be raised by the agency through activities permitted the agency as a matter of substantive law.

Through use of this asterisked condition the general assembly attempted to restrict this inherently executive decision and to retain a close power of supervision over the source of funds which the executive agency is permitted to use to fund the appropriation. As a practical matter, the general assembly mistakenly may underestimate the amount of indirect cost recoveries leaving an agency with adequate spending authority, but with inadequate funds derived from the one designated source even though other sources of cash funds exist which could be tapped. The job of raising sufficient cash funds to support an appropriation is inherently an executive function to be accomplished within the statutory responsibilities of the agency. When the general assembly directs an executive agency to use one source of cash funds but not another, it is encroaching upon executive responsibilities in a way that was disapproved by this court in Anderson v. Lamm, supra with the following language:

	ITEM & SUBTOTAL	TOTAL	GENERAL FUND	APPROPRIATION FROM CASH FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$
PART I					
DEPARTMENT OF ADMINISTRATION					
(1) EXECUTIVE DIRECTOR					
Personal Services	502,954 (17.0 FTE)		227,374	275,580*	
Salary Costs for 1982-83 Salary Survey, Anniversary Increases, and Shift Differential ^{1 2}	1,135,766		655,553	480,213**	
Operating Expenses	23,047		23,047		
Travel and Subsistence	2,146		2,146		
Capital Outlay ³	1,134,502		1,086,880	47,622****	
Test Facility Lease	25,086		25,086		
Incentive Awards	5,000		5,000		
Minority Business Development	200,000			100,000*** (3.0 FTE)	100,000 (3.0 FTE)
Capital Outlay Reserve ⁴	250,000		250,000		
Oregon Plan Legal Services ⁵	66,705		66,705		
Governor Elect (24-8-105, C.R.S. 1973)	10,000		10,000		
		3,355,206			
*These funds shall be from agency indirect costs. (Governor lined through this note, see page 89.)					
**Of this amount, \$72,578 shall be from the Highway Users Tax Fund.					
***This amount shall be from the State Department of Highways for services rendered.					
****Of this amount, \$14,476 shall be from the Highway Users Tax Fund.					
(2) MANAGEMENT SERVICES ⁶					
Personal Services	254,820 (7.0 FTE)				
Operating Expenses	16,458				
Travel and Subsistence	10,688				
Indirect Costs	9,104				
		291,070		291,070*	
*These funds shall be from user fees.					
(3) CENTRAL SERVICES ^{7 8 9}		6,148,829 (105.0 FTE)		6,148,829*	
*These funds shall be from user fees, and, of this amount, \$249,436 shall be from agency indirect costs.					
(4) ACCOUNTS AND CONTROL DIVISION					
(A) Administration					
Personal Services	1,255,847		1,033,068 (39.0 FTE)	222,779* (10.0 FTE)	
Operating Expenses	161,981		87,353	74,628*	
Travel and Subsistence	5,215		4,287	928**	
Indirect Costs	17,240			17,240*	
	1,440,283				
*These funds shall be from the receipts of the Central Collection Unit.					
**Of this amount, \$659 shall be from the receipts of the Central Collection Unit, and \$269 shall be from the State Employees' Health Insurance program.					
(B) Group Health and Life Insurance	4,736,902		3,069,512	1,667,390*	

In addition, the legislature may not attach conditions to a general appropriation bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character.

579 P.2d at 624.

B. Itemization of specific cash sources

Similar legislative interference occurs in the asterisked conditions which were vetoed in paragraphs 3, 4, 5, 6 and 7 of the Governor's veto message. In each of those asterisked conditions the legislature attempts to divide a total cash fund appropriation made for a specified purpose into several ear-marked sources, placing a specific limitation to the dollar on the amount of cash to be used from each source. Copies of each of these appropriations appear as exhibits B, C, D, E and F.

These asterisked conditions were vetoed by the Governor because they were inordinately detailed, inflexible and, in some cases, inaccurate restrictions on the ability of executive agencies to raise the cash to fund the full amount of legislatively authorized cash spending authority. R. 175-177. The Governor's characterization of these provisions was not disputed as a matter of fact.

The interference with executive administration discussed with respect to exhibit A above is more clearly demonstrated by the asterisked conditions in exhibits B-F. Those provisions illustrate the legislative direction to the executive branch which

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM		
			GENERAL FUND	CASH FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$
Vehicle Inspection Program	563,359 (12.9 FTE) <u>3,298,274</u>		638,142(M)	1,662,021*	998,111

~~*Of this amount, \$894,186 shall be from fees collected pursuant to Section 42-4-302(4)(d), C.R.S. 1973, \$563,359 shall be from fees collected pursuant to Section 42-4-313(7)(a), C.R.S. 1973, and \$204,476 shall be from fees for stationary source permits. Included in this amount is \$32,737 as Vehicle Emissions' share of Departmental Administration costs, \$2,817 as Vehicle Emissions' share of statewide indirect costs, \$41,666 as Mobile Sources' share of Departmental Administration costs, \$3,586 as Mobile Sources' share of statewide indirect costs, \$56,547 as Vehicle Inspections' share of Departmental Administration costs, and \$4,866 as Vehicle Emissions' share of statewide indirect costs. (Governor lined through this note, see page 89.)~~

(B) Water Quality Control					
Personal Services	2,758,037 (98.7 FTE)				
Operating Expenses	411,642				
Travel and Subsistence	<u>123,960</u>				
	3,293,639		805,008(M)	961,509*	1,527,122

*These funds shall be from fees collected pursuant to Section 25-8-502, C.R.S. 1973. Included in this amount is \$116,069 as Water Quality's share of Departmental Administration costs and \$9,989 as Water's share of statewide indirect costs.

(C) Radiological and Hazardous Waste Control					
Personal Services	1,123,720 (44.7 FTE)				
Operating Expenses	47,700				
Travel and Subsistence	40,692				
State Hazardous Waste Management Program	<u>59,837</u>				
	1,271,949		687,800(M)		584,149
(D) Consumer Protection					
Personal Services	720,161 (26.3 FTE)				
Operating Expenses	10,062				
Travel and Subsistence	<u>45,957</u>				
	776,180		654,820(M)		121,360
(E) Disease Control and Epidemiology					
Personal Services	907,921 (36.9 FTE)				
Operating Expenses	908,738				
Travel and Subsistence	57,979				
Tuberculosis Treatment	206,389				
Cancer Registry ^{1a}	<u>162,701</u> (6.5 FTE)				
	2,243,728		1,082,307(M)	139,838(L)*	1,021,583
		10,883,770			

*Of these funds, \$41,278 shall be from counties in which a recipient resides in accordance with Section 25-4-513, C.R.S. 1973, and \$98,560 shall be from other government and private sources.

- (2) OFFICE OF MEDICAL CARE
 (A) Alcohol and Drug Abuse
 (1) Administration

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM		
			GENERAL FUND	CASH FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$
(a) Drug Treatment Programs ²¹	1,938,159		387,632(M)	387,632(L)*	1,162,895
(b) Colorado State Hospital Drug Program ²²	<u>1,530,260</u>		1,147,695	382,565**	
	3,468,419				

*These funds shall be from local match representing 20% of the appropriation for Drug Treatment Programs.

**These funds shall be from client fees.

(B) Family Health Services

(1) Administration					
Personal Services	1,472,170				
	(60.6 FTE)				
Operating Expenses	2,904,406				
Travel and Subsistence	96,335				
Federal Grant Support	9,157,508				
	(18.0 FTE)				
Early Periodic Screening Diagnosis and Treatment Program	1,286,118				
	(6.3 FTE)				
	<u>14,916,537</u>		1,294,213(M)	1,730,863*	11,891,461

*Of these funds, \$1,286,118(F) shall be from Title XIX funds from the Department of Social Services, \$88,875 shall be from genetic testing fees, \$198,841 shall be from a grant from the Robert Wood Johnson Foundation, \$154,464 shall be from other government agencies, and \$2,565 shall be from private donations. (Governor lined through this note, see page 90.)

(2) Purchase of Services					
(a) Family Planning	1,836,395		931,565(M)	26,885(T)*	877,945
	(4.5 FTE)				
(b) Denture Program for the Elderly	366,536		366,536		
	(1.2 FTE)				
(c) Handicapped Children's Program ²³	2,904,119		2,240,766(M)	511,294(T)**	152,059
(d) Homebound Dentistry Services ^{19a}	<u>40,000</u>		40,000		
	5,147,050				

*These funds shall be from Title XIX funds from the Department of Social Services.

**Of these funds, \$244,900 shall be from Title XIX funds from the Department of Social Services, and \$266,394 shall be from client fees.

(C) Community Health Services

Personal Services	1,012,580				
	(30.5 FTE)				
Operating Expenses	419,968				
Travel and Subsistence	<u>64,166</u>				
	1,496,714		575,086(M)	315,435*	606,193

*These funds shall be from user fees.

35,652,772

(D) OFFICE OF MEDICAL CARE
REGULATION AND
DEVELOPMENT

(A) Health Policy Planning and
Evaluation

ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM		
		GENERAL FUND	CASH FUNDS	FEDERAL FUNDS
\$	\$	\$	\$	\$
Reimbursement for Members of the State Health Board	5,400			
	4,186,739	1,893,503	2,293,236*	
*Of this amount, \$35,554(T) shall come from vehicle emissions cash funds, \$45,252(T) shall come from mobile sources cash funds, \$61,413(T) shall come from vehicle inspection cash funds, \$126,058(T) shall come from waste water permit cash funds, \$135,755(T) shall come from cash funded activities of the Laboratory, \$1,706,669(T) shall be from federal indirect cost recoveries, and \$182,535 shall be the cash-funded portion of salary survey costs, anniversary increases, and shift differential. (Governor lined through this note, see page 90.)				
(B) Departmental Data				
Processing				
Personal Services	802,211 (34.0 FTE)			
Operating Expenses	42,925			
Travel and Subsistence	300			
	845,436	577,870(M)	51,702*	215,864
*These funds shall be from federal indirect cost recoveries.				
(C) Laboratory Services ²⁴				
Personal Services	1,807,911 (76.7 FTE)			
Operating Expenses	660,786			
Travel and Subsistence	10,733			
	2,479,430	702,428(M)	1,036,599*	740,403
*Of this amount, \$116,160 shall be from methadone drug testing revenues, \$70,857 shall be from streptococcus culture test revenues, \$550,598 shall be from genetic testing revenues, \$187,421 shall be from drinking water analysis revenues, \$76,715 shall be from milk testing, and \$34,848 shall be from premarital blood testing. Included in this amount is \$10,757 as the Laboratory's cash activities share of statewide indirect costs and \$124,998 as the Laboratory's cash activities share of departmental administration costs. (Governor lined through this note, see page 90.)				
(D) Local Health Services				
(1) Public Health Nurses in areas not served by local and regional health departments ^{12a}	284,912	119,000(M)		165,912
(2) Public Health Sanitarians in areas not served by local and regional health departments ^{12a}	171,751	171,751		
(3) Local Organized Health Unit Distributions pursuant to Section 25-1-516, C.R.S. 1973	3,506,988	3,387,326(M)		119,662
(4) Regional Health Departments pursuant to Section 25-1-701, C.R.S. 1973, and contingent upon dissolution of any organized health units within a regional health department as provided for in Section 25-1-718, C.R.S. 1973	17,564	17,564		
	3,981,215			
	11,492,820			

EXHIBIT D

EXHIBIT E

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM		
	\$	\$	GENERAL FUND	CASH FUNDS	FEDERAL FUNDS
Operating Expenses ^{PP}	303,679				
Travel and Subsistence	178,330				
Purchase of Employment Services	<u>95,180</u>				
		9,727,097	9,727,097		
(6) PUBLIC DEFENDER					
Personal Services ^{QA}	5,249,081		5,158,708	90,373*	
	(194.0 FTE)				
Operating Expenses	506,177		499,845	6,332*	
Travel and Subsistence	85,741		85,741		
Contract Services	62,165		65,165		
Appellate Paralegal Support	<u>13,000</u>		13,000		
		5,916,164			
*These amounts are a cash reimbursement from the City and County of Denver for Public Defender services.					
TOTALS PART X (JUDICIAL)		\$ 64,022,072	\$ 63,855,367	\$ 166,705	

PART XI

DEPARTMENT OF LABOR AND EMPLOYMENT

(1) ADMINISTRATION AND PERSONNEL					
Personal Services	627,803				
	(22.6 FTE)				
Salary Costs of 1982-83 Salary Survey and Anniversary Increases ^{1 2}	580,131				
Operating Expenses	81,655				
Travel and Subsistence	3,158				
Capital Outlay ³	1,369,161				
Oregon Plan Legal Services ⁴	<u>249,210</u>				
		2,911,118	244,319	898,062*	1,768,737

~~*Of this amount, \$247,492 shall be in statewide indirect costs, \$81,713 shall be for legal services used by cash-funded agencies, \$23,709 shall be for capital outlay by cash-funded agencies, \$456,303 shall be for cash-funded agencies for salary survey and anniversary increases, and the remainder shall be in agency indirect costs. Of the \$456,303 in cash funds for salary survey and anniversary increases, \$6,635 shall be from the Highway Users Tax Fund for the oil inspection program, and the remainder shall be from other cash-funded programs within the Department. (Governor lined through this note, see page 91.)~~

(2) LABOR AND EMPLOYMENT

(A) Labor and Employment Programs^{QA}

Personal Services	17,943,354				
	(1,102.6 FTE)				
Operating Expenses	11,330,966				
Travel and Subsistence	<u>370,334</u>				
	29,644,654		1,833,939(M)	450,584*	27,360,131

*Of this amount, \$369,283 shall be from the Highway Users Tax Fund, and \$81,301 shall be from the Major Medical Insurance Fund.

(B) Special Purpose

K

choices to make among the several cash fund sources available to a particular agency. Where the general assembly sets an overall limit on cash funds which may be spent for a specified purpose it is exercising appropriate legislative control. Further restrictions on the level of cash to be raised from any particular cash source is not properly a part of the appropriation. The practical effect of the use of asterisked conditions containing inflexible, inordinately detailed, and inaccurate limitations on cash fund sources is to direct the executive agency which cash raising activities it should operate and which activities it should not operate. The agency has no alternative but to follow these legislative directives if it is to make use of the full cash spending authority as separately stated on the line above the condition.

Such restrictions are quite similar to a provision considered in the Anderson case which conditioned an appropriation for special residential child care facilities by requiring that rate increases be approved by the Joint Budget Committee. This court held that restriction to be unconstitutional, stating:

By imposing this condition, the legislature is not merely limiting the overall funds available for the program, but rather is attempting to undertake an executive function in deciding whether a rate increase is appropriate. In our view, this is a clear violation of the separation of powers directive.

579 P.2d at 627.

Examination of the asterisked conditions in exhibits B-F

reveals that most of these cash raising activities are undertaken by an agency pursuant to statutory mandates referenced in the conditions. The practical and intended effect is to direct an agency to operate one statutory program while minimizing another. Such decisions, as discussed above, are properly executive administrative decisions when they require the apportionment of limited resources among competing statutory responsibilities. If they become matters of legislative policy they should properly be the subject of separate substantive legislation.

Article V, section 32 of the Colorado Constitution requires that the Long Bill contain nothing but appropriations for the expenses of the three branches of government. Whether the asterisked conditions are viewed as legislative strings tied to appropriations, or as substantive provisions of law, the general assembly had no business imposing them in the Long Bill.

C. Component items set out in the asterisked conditions were subject to the item veto.


If the court concludes that the asterisked conditions vetoed by the Governor in paragraphs 3, 4, 5 and 7 of his veto message were permissible legislative restrictions, those vetoes should be sustained as proper item vetoes. Each of the asterisked conditions shown on exhibits B-F itemizes, (parenthetically) sums of money which are related (by use of the asterisk) to a purpose set out above in a line item appropria-

tion. Each of those components comprises a purpose, subject and amount. Each constitutes a single item within an appropriation bill that is distinct, separate and indivisible. In effect, the asterisked condition sets out a separate enumeration of the total cash appropriation. Consequently the Governor properly could veto one or all of the component items. Cf. Stong v. People ex rel. Curran, supra.

If it is argued that the placement of these separate items in an asterisked condition somehow changes their nature as separate items, then form is elevated over substance. Legislative attempts to characterize specific appropriation bill provisions as not being an "item", bind neither the Governor nor this court. See Washington Ass'n of Apartment Ass'ns v. Evans, 88 Wash. 2d 563, 564 P.2d 788 (1977).

The Supreme Court of Virginia has applied a constitutional provision virtually identical to that of Colorado and concluded that the Governor may properly veto a portion of related appropriations without vetoing all. In Brault v. Holleman, 217 Va. 441, 230 S.E.2d 238 (1976) the Virginia court considered several appropriations to the Northern Virginia Transportation Commission made to provide state aid for the capital costs of a transit system. The legislature captioned these related appropriations as one "item." The Governor vetoed one of these appropriations, allowing three others to stand, and the court sustained this as a proper item veto.

Under a previous Virginia case, Commonwealth v. Dodson, 176




Va. 281, 11 S.E.2d 120 (1940), the applicable item veto language of the Virginia constitution had been construed as requiring the Governor to strike down the whole of an item, and barring the Governor from disapproving part of an item while approving the remainder.^{85/} In the Brault case an argument was made that the vetoed appropriation was so "tied up" with the other related appropriations that together they constituted a single item, veto-proof except as a whole. 230 S.E.2d at 242. The Virginia court rejected this argument stating that it was not enough that several appropriations to one agency were related. It adopted the following test:

If it is clear from the appropriations bill that, with the disapproved provision eliminated, the approved appropriations cannot effectively serve their intended purposes, the attempted elimination is invalid.

230 S.E.2d at 244.

Under that test the Governor's vetoes of the components of the asterisked conditions, shown on exhibits B-F, must be sustained. All of the amounts appropriated from specific cash fund sources may be eliminated from the bill without affecting the legislative appropriation of a total cash fund amount in the above line for the indicated purpose. This was both the purpose of the Governor's veto and its effect. When the components of these asterisked conditions are deleted, the approved appropriation continues to effectively serve its purpose.



The January 17 order recognized that the components of the asterisked conditions were distinct items subject to veto. Janu-

ary 17 order, R. 419-420. The court's reasoning went astray, however, by concluding that the Governor's item veto of the components in the asterisked conditions necessarily required a reduction of the separate total cash fund appropriation subject to the asterisks.

As the district court itself acknowledged, this conclusion leads to an incongruous result because it requires the Governor to effect a partial veto reducing the above line item appropriation in order to delete one or more items in the asterisked condition. January 17 order, R. 420. This reasoning further requires the Governor to reduce or eliminate the cash fund portion of a line item without changing the related general fund appropriation in the same line. See exhibits B-F. Such a result would obviously be a partial veto undistinguishable from that disapproved in the Stong case.

Significant problems arise when the court dictates that the veto of any component of an asterisked condition requires a reduction of the related total cash appropriation. These problems illustrate how legislative use of asterisked conditions forces the Governor to make the all or nothing choices which were the very reason why the item veto power was enacted in the constitution. See Stong v. People ex rel. Curran, supra. On the other hand the Governor's use of the item veto to delete only the asterisked conditions avoids the problem of a partial veto. His vetoes eliminated separate, distinct items "without affecting the enactment's other purposes or provisions." Brault v. Holleman,

supra.

In a virtually identical situation the West Virginia Supreme Court has held that the Governor's item veto power permits him to strike out subheadings or subtotals within an itemized appropriation, leaving the total amount intact to be spent for a more general subject. State ex rel. Brotherton v. Blankenship, 214 S.E.2d 467 (W. Va. 1975). The court reasoned:

Additionally we hold that an item may occur as a separate particular in an enumeration, account or total, and may be any separate subject and amount within an account or total.

214 S.E.2d at 481. In that decision the Governor was not required to reduce the total by the amount of the vetoed subtotal. The district court erred in the January 17 order by failing to reach the same conclusion.

D. The Governor properly used his item veto power to restore the Highway Users Tax Fund spending limit to the level initially enacted in the 1981 Long Bill.

The final challenged veto at issue in this appeal presents a different situation from that of the other asterisked conditions. House Bill 1261 was a supplemental appropriation bill which amended a portion of the 1981 Long Bill, i.e., that portion which contained the budget for the Department of Administration. As originally enacted in 1981, and approved by the Governor, the 1981 Long Bill made an appropriation to the Division of Accounts

and Control for Central Pots which contained the following asterisked condition: "* Of these amounts \$4,505,659 shall be from the Highway Users Tax Fund." 1981 Colo. Sess. Laws, ch. 1, p. 7. See attached exhibit G.

In 1982 House Bill 1261 was introduced which, among other changes, crossed out the figure \$4,505,659 contained in that asterisked condition and substituted the figure \$2,493,125. See attached exhibit H. This change constituted an item appropriating an indivisible amount of money for a specified purpose. The Governor disagreed with this amendment but not with the original restriction. He exercised his item veto power to strike the reduction. Since this amendment was not enacted into law, the higher limit on the Highway Users Tax Fund as initially enacted in the 1981 Long Bill continued in effect.

The Governor's intent is evident from his veto message where he stated, in pertinent part:

A legal and accounting review of the Highway Users Tax Fund appropriation limit indicates that a higher limit than currently utilized is justified.

To achieve this higher limit, it is necessary to increase the Highway Users Tax Fund spending authority. My veto of this line item will accomplish this objective.

R. 194.

The Governor carried out his intent by lining out the entire asterisked condition as amended in House Bill 1261. See ex. H. The district court erroneously interpreted the Governor's intent to be to remove any restriction on the amount of moneys

Ch. 1

Appropriation

7

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM		
			GENERAL FUND	CASH FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$
(4) ACCOUNTS AND CONTROL DIVISION --Cont'd					
(D) Workmen's Compensation Insurance Premiums for the fiscal year ending June 30, 1982, and for prior year's adjustments	2,437,651		1,940,018	497,633	
(E) Employees' Emeritus Retirement	31,136		31,136		
(F) Employment Security Payments — Premiums for the fiscal year ending June 30, 1982, and for prior years' adjustments *	557,040		352,606	204,434	
(G) Salary Survey Adjustments — for Salary Survey Adjustments pursuant to Section 24-50-104, C.R.S. 1973	18,915,618		11,992,502	6,923,116*	
(H) Staff Salary Increases — Department of Education	198,700		198,700		
(I) Shift Differential *	1,032,407		666,935	365,472*	
(J) Anniversary Increases	<u>2,131,775</u>		1,351,545	780,230*	
		33,368,213			
*Of these amounts, \$4,505,659 shall be from the Highway Users Tax Fund.					
(5) DIVISION OF AUTOMATED DATA PROCESSING					
(A) Statewide Automated Data Processing					
Personal Services	503,728				
(14.0 FTE)					
Operating Expenses	17,344				
Travel and Subsistence	5,063				
Higher Education Consortium	<u>8,529</u>				
	534,664		534,664		
(B) General Government Computer Center					
Personal Services	2,428,109		1,886,176	541,933(T)*	
(123.0 FTE)					
Operating Expenses	1,779,854		1,135,910	643,944*	
Travel and Subsistence	<u>2,491</u>		2,491		
	4,210,454				
		4,745,118			
*These funds shall be from user fees.					
(6) STATE ARCHIVES AND PUBLIC RECORDS DIVISION					
Personal Services	258,829				
(13.0 FTE)					
Operating Expenses	18,462				
Travel and Subsistence	<u>2,948</u>				
		280,239	280,239		

EXHIBIT G

		APPROPRIATION FROM	
		CASH FUNDS	FEDERAL FUNDS
ITEM & SUBTOTAL	TOTAL	GENERAL FUND	
\$	\$	\$	\$
(K) DEFERRED COMPENSATION	5,260		5,260**
	33,368,213		
	30,728,480		
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pm</div></div><div><div>of these amounts, \$4,505,659 \$2,493,125 shall be from the Highway Users Tax Fund.</div><div>**THIS AMOUNT SHALL BE FROM THE DEFERRED COMPENSATION PLAN.</div></div><div><div>(5) DIVISION OF AUTOMATED DATA PROCESSING</div><div>(A) Statewide Automated Data Processing</div><div>Personal Services</div><div>Operating Expenses</div><div>Travel and Subsistence</div><div>Higher Education Consortium</div><div>503,728</div><div>(14.0 FTE)</div><div>17,344</div><div>5,063</div><div>8,529</div><div>534,664</div><div>534,664</div></div><div><div>(B) General Government</div><div>Computer Center</div><div>Personal Services</div><div>Operating Expenses</div><div>Travel and Subsistence</div><div>2,428,109</div><div>(123.0 FTE)</div><div>1,779,854</div><div>2,491</div><div>4,210,454</div><div>1,886,176</div><div>1,135,910</div><div>2,491</div><div>541,933(T)*</div><div>643,944*</div><div>4,745,118</div></div></div></div>			

available from the Highway Users Tax Fund, i.e. a retroactive attempt to remove the restriction as initially enacted. In fact, the Governor's veto accomplished what the item veto power was intended to do, it merely disapproved a separate item in an amendment to the general appropriations bill, leaving the status quo as it was before the bill was presented to him.

This same issue was addressed by the Michigan Court of Appeals in Stopczynski v. Governor, 92 Mich. App. 191, 285 N.W.2d 62 (1979). That case involved a legislative supplemental appropriation measure which reduced the original appropriation for nontherapeutic abortions to the amount of one dollar. The Governor vetoed this amendment. It was argued that the veto was invalid and that even if valid, its effect was to eliminate any appropriation for nontherapeutic abortions. Consequently no money should be spent for that purpose. The court disagreed, stating:

Because the veto makes the line item void, the line item has no effect upon the status quo (cite omitted). Thus, the Governor did not achieve an affirmative action but rather, by his veto, maintained the status quo. As the Department of Human Services was funding nontherapeutic abortions prior to this bill, and since the vetoed line has no effect, funding of nontherapeutic abortions can continue.

285 N.W.2d at 66.

What the district court failed to understand in the instant case is that the Governor's veto of the decrease in the spending authority of the Highway Users Tax Fund resulted in restoration

of the original spending limit previously enacted. It did not achieve an affirmative action, but retained the status quo and should be sustained as a proper item veto.^{9/}

CONCLUSION

Art. V, sec. 32 of the Colorado Constitution mandates that the Long Bill "shall embrace nothing but appropriations" for the expenses of state government, interest on public debt and public schools. If the asterisked conditions are something other than appropriations, they are void and have no place in an appropriations bill. If they are appropriations then they are subject to the item veto as exercised by the Governor.

Whether the general assembly drafts appropriation measures as footnotes, as headnotes, or as asterisked conditions, is not significant. In each instance the vetoed appropriations bill provision must be examined first to determine its constitutional validity and then, if constitutionally enacted, to ascertain whether it is an item subject to veto. Scrutiny of the asterisked conditions which are the subject of this appeal leads to the inclusion, for all the reasons stated above, that the district court erred in its decision that the Governor's vetoes were improper. The district court should be reversed and judgment entered for the Governor on this claim.

^{1/} House Joint Resolution No. 1025 is alleged by plaintiff to authorize this lawsuit. R. 224-227. That measure required approval by a simple majority of the two houses, rather than two

thirds approval, and was never presented to the Governor for approval as required for legislation by article V, section 39 of the Colorado Constitution. Judicial intervention is sought by plaintiff in order to avoid the constitutional requirement that matters be passed over an executive veto only by obtaining approval of at least two-thirds of the members of both houses.

2/ Despite the unqualified ruling in Anderson that inclusion of FTE limits in the Long Bill is unconstitutional, the general assembly has continued to enact such FTE limitations as conditions on appropriations made in the annual Long Bill. In the 1982 Long Bill the definitions section sets out a definition of "FTE" which includes the following directive:

The FTE limitation so indicated is the maximum number of FTE positions which may be established at any time without additional legislative approval.

R. 15. Specific FTE limitations appear throughout the body of the Long Bill appended to virtually every personal services appropriation. See, e.g., R. 19, 20, 21, 22 and so on. The notable exception to FTE limitations occurs in the appropriation to the legislative branch. R. 82.

3/ Article V, section 32 states:

The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative and judicial departments of the state, state institutions, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

4/ The court carefully distinguished the factual circumstances before it in Stong v. People ex rel. Curran from cases in other jurisdictions where courts had held that a governor could properly veto separate items that were components of a larger appropriation. 74 Colo. at 290, 291.

5/ The Governor's power to veto legislation is a constitutional delegation of a portion of the legislative power to the Governor. As such it is an express exception to the general grant of legislative power to the general assembly and the language of article IV, section 12 should be strictly construed. Nonetheless even strict construction must take account of the purposes for which the exception was made. Stong v. People ex rel. Curran, 74 Colo. at 290.

6/ The Stong decision recognizes three specific evils which

justify the item veto: 1) "omnibus" appropriation bills; 2) "log rolling" - incongruous provisions which are placed in one bill because they would not pass on their separate merits; and 3) "riders" - objectionable legislation included in the general appropriation bill to force an executive choice between shutting government down, by veto of an entire appropriations bill, or permitting an objectionable provision to be enacted into law. 79 Colo. at 290, 291.

7/ Section 2(e) in the headnotes of the 1982 Long Bill contains a definition of "cash funds" to be used throughout that bill, as follows:

The figures in the "cash funds" column indicate all non-general fund sources and all nondirect federal fund sources and may be cash funds established by statute, nonstatutory cash accounts, tuitions, overhead reimbursements, certain fees, governmental and nongovernmental "third-party" payments, payments for services, and inter-agency transfers.

R. 17

8/ Article V, section 6 of the Virginia Constitution empowers the Governor "to veto any particular item or items of an appropriation bill." The Virginia Supreme Court described the applicable principles as follows:

In the constitutional sense, an item of an appropriation bill is an indivisible sum of money dedicated to a stated purpose; the term refers to something which may be eliminated from the bill without affecting the enactment's other purposes or provisions.

Brault v. Holleman, supra at 241, 242.

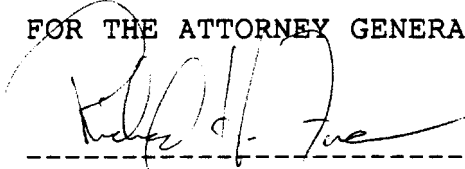
9/ A Massachusetts decision has addressed the policy considerations which underly the exercise of the executive's power to veto items in a supplemental appropriation bill. In Opinion of the Justices to the Governor, 370 N.E.2d 1350 (Mass. 1977) the court upheld an item veto of certain words and phrases in a supplemental bill which had the effect of adding new items to a previously made appropriation. The court stated:

If the Governor could not veto such a new item the way would be open for evasion of the item veto by a two-step process. The Legislature could first make a noncontroversial appropriation. Once that

was enacted, it could then insert the controversial restriction as a separate section in an essentially supplementary appropriation bill. The very vice of "log-rolling" against which the item veto is a safeguard would be reintroduced. See Bengzon v. Secretary of Justice, 299 U.S. 410, 415, 57 S. Ct. 252, 81 L. Ed. 2d 312 (1937).

370 N.E.2d at 1352.

FOR THE ATTORNEY GENERAL



RICHARD H. FORMAN, 5746
Solicitor General

Attorneys for Defendant-Appellant

1525 Sherman Street, 3d Floor
Denver, Colorado 80203
Telephone: 866-3611
AG Alpha No. EX AD HBDKI
AG File No. DAG8401924/MT

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within OPEN-
ING BRIEF upon all parties herein by depositing copies of same in
the United States mail, postage prepaid, at Denver, Colorado this
20th day of June 1984, addressed as follows:

Philip G. Dufford
Gregory A. Ruegsegger
Welborn, Dufford & Brown
1700 Broadway
Denver, Colorado 80290-1199

William A. Hobbs
Rebecca C. Lennahan
Douglas G. Brown
Colorado Legislative Drafting Office
Room 30, State Capitol
Denver, Colorado 80203

 Date Filed