

1976 WL 30442 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 28, 1976

The Governor is without constitutional authority to withdraw, or rescind, his veto of House Bill 2721. (Judicial Reform)

QUESTION PRESENTED:

Whether the Governor, having on April 13, 1976, vetoed House Bill No. 2721 ('Judicial Reform'), and having duly reported his objections, which were duly entered into the House Journal, may now withdraw, or rescind, that veto, neither house of the General Assembly having to date reconsidered the vetoed bill.

AUTHORITIES:

Art. 4, § 21; Art. 1, § 8; Constitution of the State of South Carolina, 1895, as amended.

[Doran v. Robertson](#), 203 SC 434, 27 SE2d 714 (1943).

[Parker v. Bates](#), 216 SC 52, 56 SE2d 723 (1949).

82 CJS Statutes § 52.

DISCUSSION:

By message dated April 13, 1976, the Governor returned House Bill No. 2721 to the House of Representatives without his approval. The Governor's objections were entered into the Journal of the House of Representatives for Wednesday, April 14, 1976, at page 1826.

This veto was exercised by authority granted to the Governor pursuant to the above-referenced Article 4, § 21, which provides in relevant part as follows:

§ 21. Bill or joint resolution must be signed or vetoed by Governor. Every bill or joint resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approves he shall sign it; if not, he shall return it with his objections, to the house in which it originated, which shall enter the objections at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of that house it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both houses shall be taken by yeas and nays, and the names of the persons voting for and against the bill or joint resolution shall be entered on the Journals of both houses respectively.

If a bill or joint resolution shall not be returned by the Governor within five days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by

adjournment, prevents return, in which case it shall have such force and effect unless returned within two days after the next meeting.

Our Supreme Court has held that the constitutional authority of the State's Chief Executive to veto is in the nature of a legislative power. Doran v. Robertson, supra; Parker v. Bates, supra.

The South Carolina Constitution provides as follows with respect to separation of powers.

Art. 1, § 8. Separation of powers. In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

*2 Thus it is apparent that the constitutional veto power of the Governor is an exception to the general principle of separation of powers. In light of the above, the following language from 82 CJS Statutes § 52 is instructive:

. . . The authority of an executive to set aside an enactment of the legislative department is not an inherent power, and can be exercised only when sanctioned by constitutional provision, and only in the manner and mode prescribed . . . The veto power is in derogation of the general plan of the state government, and provisions authorizing it must be strictly construed, so as to limit its exercise to the powers expressly enumerated or necessarily implied . . .

Nothing in the constitutional provision relating to the veto suggests that the Governor can rescind a duly executed veto.

Furthermore, application of the above-referenced rule of strict construction would, in my opinion, bar a veto rescission under the instant circumstances. Article 4, § 21, states that unless a bill is signed or vetoed by the Governor 'within five days after it shall have been presented to him, Sundays excepted . . .' the bill will become law. Thus, when the General Assembly is in session, the Governor is accorded only five days in which to determine whether to sign, or to veto or to allow the bill to become law without his signature.

A 1911 Attorney General's opinion-letter is not on point with the question here raised, inasmuch as that letter dealt with the question of whether an act of the legislature could become law where the Governor had refused to sign the Act after adjournment of the legislature and had then afterwards recalled it from the Secretary of State and approved it prior to the legislature's reconvening. 1911 Opinion of the Attorney General, p. 58.

A veto rescission in the instant matter would, in effect, circumvent the five-day provision by returning the parliamentary situation to that which obtained immediately after the bill was presented to the Governor. Inasmuch as the veto message setting forth the Governor's objections was duly entered into the House Journal, and inasmuch as the five-day period has expired, and inasmuch as the applicable legal principles call for a strict construction of the Governor's veto authority, a rescission of the veto of House Bill 2721 is beyond the constitutional authority of the Governor.

CONCLUSION:

The language of the constitutional veto authority, the applicable principles of constitutional construction and the attendant facts all lead to the conclusion that the Governor is without constitutional authority to rescind the veto of House Bill 2721.

Edward E. Poliakoff
Assistant Attorney General

1976 WL 30442 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.