

1981 WL 157897 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 5, 1981

*1 The Honorable Ramon Schwarts, Jr.
Speaker of the House of Representatives
Blatt Building
Columbia, South Carolina 29211

Dear Mr. Speaker:

You have requested the comments and opinions of this Office concerning the effects of certain clarifications of the veto message of Governor Riley dated July 28, 1981, with reference to the General Appropriations Bill, 1981-82 (H-2461, R-232). Our attention has also been called to a letter dated August 3, 1981, transmitting certain correctional information regarding the veto message of the Governor.

The message of August 3, 1981, is not a purported amendment to the Governor's veto message. In the opinion of this Office, after the expiration of the constitutional period of five days in which the Governor may act upon veto matters, his authority ceases in accordance with the constitutional mandate that provisions of the Constitution be construed as mandatory and prohibitory unless otherwise plainly indicated by the text.

In the exercise of the veto, the Governor is deemed to be exercising authority of a legislative nature and, while there appears to be a dearth of legal authority on the subject, it would appear that clerical mistakes or obvious errors in a veto message may be rectified. Cf. [Section 2-7-210, Code of Laws, 1976](#), concerning the statutory authority for correction of mere errors by the Clerks of the House and Senate. A further rule has been enunciated that the whole of a Governor's veto message as to an individual item should be considered in determining its intent, the words 'with his objections' in [Article IV, Section 21, S. C. Constitution](#), meaning his reason for objecting or opposing. [State v. Blankenship, 154 W.Va. 253, 175 S.E.2d 172 \(1970\)](#). See, West S.E. Digest, [Statutes](#) § 32.

It is, therefore, the opinion of this Office that if, from the reading of the whole veto message with reference to each item, the nature of the error is clearly of a clerical or typographical nature and the error is evident on the face of the veto message, the veto should be considered as though correctly stated. A veto is presumed constitutionally valid in the same manner that an act of the Legislature is so presumed. 82 C.J.S. [Statutes](#) ¶52.

The following comments are submitted as to the items mentioned in the letter of August 3, 1981, and submitted by the staff of the Governor:

Veto No. 6. The veto message refers to Section 20, line 27, page 159, and establishes that the total amount involved in this item is \$10,548.00; whereas, in fact, the amount appropriated in the identified item, line and page, is \$9,513.00.

This appears clearly to be an obvious error, and the Governor intended to veto the item on the line and page indicated, irrespective of the slight discrepancy of the amount stated in the veto message and the amount actually appropriated. The Governor's Veto No. 6 should be considered as correctly stated.

Veto No. 7. The Governor's veto message identifies the appropriation for Lander College, [Section 21](#), lines 17, 18 and 19, page 167, and establishes the total amount involved in the veto message as \$68,707.00. The total of the amounts involved in the three

lines incorrectly noted as page 167 is zero. The letter of the Governor's staff states that the veto message should read page 166 instead of page 167 and the total amount involved in the line items vetoed is \$68,707.00.

***2** While it is obvious that a clerical error has been committed in that the amount apparently vetoed is not the same as the total of the amounts established in the veto itself, it is doubtful whether this error can be corrected by shifting the effect of the veto from one page of the bill, which is precisely identified in the veto message, to another page.

Veto No. 10. The veto recites that it concerns USC Spartanburg, Section 23, Subsection 230, Item: Contractual Services, lines 26 and 28, page 210. Reference to these lines shows that the total involved is \$76,785.00; whereas, the amount established in the veto is \$68,707.00. There is, in fact, no Subsection 230 in the appropriations made for the Spartanburg Campus. The letter from the Governor's staff states that this should be Subsection 23(D) rather than Subsection 230, which totals \$68,613.00.

This is an obvious clerical error and the Governor's veto should be considered as correct.

Veto No. 12. The Governor's veto identifies Winthrop, Section 24, Item: Fixed Charges and Contributions, line 27, page 254, and the amount established in the veto is \$23,443.00.

The letter from the staff of the Governor recites that this should read line 37 instead of line 27, and reference to amounts on that line show that the amount involved is \$23,443.00. This appears to be an obvious clerical error for the reason that that amount is the only amount set forth on page 254, comprising that figure of appropriations.

In the opinion of this Office, this veto should be considered as correctly stated.

Veto No. 18. The Governor's veto refers to USC Medical School, Section 23, Subsection 23(A), lines 24-29, page 179. The amount identified as involved is \$108,800.00 (8 positions). The amounts set forth on lines 24-29, page 179, total \$109,287.00 and the 8 positions are involved in those items.

This appears to be an obvious clerical error and the Governor's veto should be considered as correctly stated.

Veto No. 22. The Governor's veto recites that this subject is Mental Retardation, Section 39, New Positions, lines 15-21, page 370, and establishes a total of \$60,000.00 (3 positions) as being involved.

This appears to be an obvious clerical error and the Governor's veto message should be accepted as correct.

Veto No. 24. According to information submitted to this Office, this matter was corrected before the veto message was sent over regarding it.

Veto No. 51. The Governor's veto message recites that it concerns Section 17, page 40, Item 1, The Citadel Proviso. Reference to page 40 of the Appropriations Bill does not concern The Citadel but concerns the Judicial Department. The appropriations for The Citadel are included in pages 131-140 and the proviso identified in the Governor's veto is found on page 140.

This appears to be an obvious clerical error and the Governor's veto should be regarded as directed to page 140 rather than 40. Whether the Governor has the authority to veto a proviso alone is a question which presents considerable difficulty. It is doubtful that it is a 'section or item' as referred to in the Governor's constitutional veto authority but there is some basis for sustaining this type of veto in [Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723.

***3** In the opinion of this Office, the veto should be considered as referable to page 140.

Veto No. 60. The veto message recites that it concerns Technical and Comprehensive Education, Section 27, item 3, line 26, page 272. The portion of the proviso vetoed is set forth in the veto itself and is found on line 46 and the following lines rather than line 26 as identified in the veto.

It is the opinion of this Office that this is an obvious clerical error and that the Governor's veto message should be considered as correctly referring to line 46.

No opinion is expressed with regard to the question of the elimination of all or part of a proviso only but there is very little, if any, authority and the problem poses difficult legal considerations which are alluded to in Parker v. Bates, op. cit.

Very truly yours,

Frank K. Sloan
Deputy Attorney General

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