



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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Mr. Bernard Vash
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Kenosha County
912 - 56th Street, Room LL13
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Dear Mr. Vash:

¶ 1. Your predecessor asked two questions relating to a county executive's veto authority to amend a line item budget appropriation. He asked whether a county executive may cross out a specific line item and replace it with a lesser figure. He also asked whether constitutional amendments limiting the Wisconsin Governor's veto power have similarly affected a county executive's power. Finally, your predecessor asked whether a particular action taken by the Kenosha County Board was legally effective.

¶ 2. I conclude that a county executive has the authority to reduce a line item from one specific dollar figure to another through the use of his partial veto. Further, recent constitutional amendments limiting the Governor's veto authority in Wis. Const. art. V, § 10(1)(c) impose no corresponding limit upon the veto authority of the county executive. I decline to answer the question about the efficacy of a particular action of the Kenosha County Board because it would turn on the resolution of facts, a task inappropriate for an attorney general opinion.

¶ 3. Your predecessor indicated that, in a past year's budget recommendation, the Kenosha County executive inserted a line item for county supervisors' health insurance assuming a premium contribution of 15 percent. When the budget was considered by the county board, the board voted to set the supervisors' insurance contribution at zero. No motion was made to add the necessary monies to the county executive's proposed budget to fund that result, but, prior to forwarding the passed budget to the county executive, the county finance department added that amount to the budget line item. This had the effect of reducing a line item in the budget.

¶ 4. The county executive exercised his veto authority by crossing out the budget line item amount and writing in a lesser amount: the original monetary figure from his budget proposal, reflecting the 15 percent contribution. The county board failed to override the veto.

¶ 5. Your predecessor asked whether the county executive could reduce the line item in this way through the use of his partial veto. The county executive's veto power over appropriations is both constitutional and statutory. Wisconsin Const. art. IV, § 23a provides in part: "Appropriations may be approved in whole or in part by the chief executive officer [of the county] and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for in other resolutions or ordinances." The county executive's statutory veto authority under Wis. Stat. § 59.17(6) contains virtually identical language.

¶ 6. Statutory language is construed according to its plain meaning. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. Both Wis. Const. art. IV, § 23a and Wis. Stat. § 59.17(6) unambiguously state that an appropriation "may be approved in whole or in part." Here, the appropriation is the amount contained in the line item. The county executive possessed the statutory authority to reduce the line item to any lesser amount.

¶ 7. Your predecessor asked that I address the applicability of 80 Op. Att'y Gen. 214 (1992), which concludes that the county board's failure to override the county executive's veto of an *entire* line item fails to restore that line item to the amount originally contained in the county executive's budget request. Those facts are not presented here. That opinion would be applicable only if the county executive had vetoed the entire line item in the budget.

¶ 8. Here, the county executive exercised his partial veto authority to disapprove an appropriation in part. If a line-item appropriation in the county board's budget is greater than the amount included in the county executive's budget request, the county executive may veto all or any part of the enacted appropriation amount, even if the resulting reduction happens to equal the amount contained in his budget request. In doing so, he acts within his constitutional and statutory authority by approving the budgeted amount "in part" within the meaning of Wis. Const. art. IV, § 23a and Wis. Stat. § 59.17(6).

¶ 9. Your predecessor next asked whether recent constitutional amendments limiting the Governor's veto authority, generally set forth in Wis. Const. art. V, § 10, impose corresponding limits upon the veto authority of the county executive. In 1990,

a constitutional amendment eliminated the Governor's ability to exercise his partial veto authority in such a way as to "create a new word by rejecting individual letters in the words of the enrolled bill." *See* Wis. Const. art. V, § 10(1)(c). This procedure had previously been upheld in *State ex rel. Wisconsin Senate v. Thompson*, 144 Wis. 2d 429, 424 N.W.2d 385 (1988), as long as the veto resulted in a complete and workable law. *See* Benjamin W. Proctor, *Wisconsin's Chief Legislator: The Governor's Partial Veto Authority And The New Tipping Point*, 90 Marq. L. Rev. 739, 745 n.48 (2007). In 2008, a second constitutional amendment eliminated the Governor's ability to exercise his partial veto authority in such a way as to "create a new sentence by combining parts of 2 or more sentences of the enrolled bill." *See* Wis. Const. art. V, § 10(1)(c). That procedure had also previously been upheld by the courts. *See* Proctor, *supra*, at 745 & n.50.

¶ 10. Prior to those amendments, a previous attorney general opinion had concluded that a county executive's power to approve any part of a resolution or ordinance containing an appropriation is similar to the Governor's constitutional power. 73 Op. Att'y Gen. 92, 93-94 (1984). The opinion considered and rejected the premise that "the wording of the veto power with respect to the Governor is broader" because the Legislature approves bills, even though the first sentence of the county executive veto provisions in Wis. Const. art. IV, § 23a refers only to "appropriations." *See* 73 Op. Att'y Gen. at 95. The opinion reasoned that other language in Wis. Const. art. IV, § 23a, referring to "the part of the resolution or ordinance objected to," operated "to extend to [the] power of partial approval to every part of a resolution or ordinance containing an appropriation." 73 Op. Att'y Gen. at 95. Subsequent attorney general opinions agreed with 73 Op. Att'y Gen. 92. *See* 77 Op. Att'y Gen. 113, 118 (1988) ("In fact, the county executive's partial approval/partial veto authority with respect to appropriations carries with it a power, legislative in nature, similar to that exercised by the Governor in reference to acts of the Legislature, to change the policy of the law as originally envisaged by the county board."); 74 Op. Att'y Gen. 73, 74 (1985) (county executive veto statute "contains language substantially identical to the [Governor's] constitutional provision").

¶ 11. The amendments to Wis. Const. art. V, § 10 were not made to Wis. Const. art. IV, § 23a. The limiting language added in Wis. Const. art. V, § 10(1)(c) applies only to the Governor. Although there has been at least one legislative proposal to amend Wis. Const. art. IV, § 23a to similarly limit the county executive's veto authority, *see* 2009 Senate Joint Resolution 11, no such amendment has been enacted. As a result, the veto power accorded to the county executive with respect to appropriations is unaffected by those constitutional amendments.

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¶ 12. Your predecessor also asked whether the action taken by the Kenosha County Board in setting the contribution limit at zero was legally effective. I decline to answer that question. What the board intended by passing the motion is primarily a question of fact. “[T]he attorney general does not have the authority to determine questions of fact. 77 Op. Att’y Gen. Preface (1988).” 80 Op. Att’y Gen. 341, 344 (1992).

¶ 13. I conclude that a county executive may partially veto a line-item appropriation in a budget passed by the county board by inserting a lesser monetary amount, even if the resulting amount coincides with the amount in the executive’s budget request. I further conclude that recent constitutional amendments limiting the Governor’s veto authority under Wis. Const. art. V, § 10(1)(c) impose no corresponding limits upon the veto authority of the county executive under Wis. Const. art. IV, § 23a.

Sincerely,

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Attorney General

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