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Donald H. MacManus and Clarence A. Decker v. John A. Love, Governor of the State of Colorado

No. 25398

Supreme Court of Colorado

179 Colo. 218*; *499 P.2d 609*; *1972 Colo. LEXIS 737

July 31, 1972, Decided

PRIOR HISTORY: [***1] *Appeal from the District Court of the City and County of Denver, Honorable Henry E. Santo, Judge*.

DISPOSITION: *Reversed.*

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff state legislators brought an action against defendant governor, seeking a declaration that the governor unlawfully vetoed certain provisions of a bill passed by the Colorado General Assembly. The governor counterclaimed. The District Court, City and County of Denver (Colorado), entered a judgment declaring that the governor's veto of a certain provision was unlawful. The governor appealed.

OVERVIEW: The provision of the bill vetoed by the governor required state administrative agencies to obtain prior legislative approval before spending any federal funds or cash received in excess of the agency's appropriation. In his counterclaim, the governor alleged that the provision he vetoed violated the separation of powers provisions of *Colo. Const. art. III* and *Colo. Const. art. V, § 32*. On appeal, the court reversed, holding that the vetoed provision violated the separation of powers doctrine by attempting to limit the executive branch in its administration of federal funds received by it directly from agencies of the federal government and unconnected in any way with state appropriations. The vetoed section of the bill was unconstitutionally void irrespective of the governor's veto.

OUTCOME: The court reversed the trial court's judgment.

LexisNexis(R) Headnotes

Constitutional Law > Separation of Powers
[HN1] See *Colo. Const. art. III*.

Governments > Legislation > Enactment
Governments > Legislation > Types of Statutes

[HN2] The Colorado General Assembly has plenary or absolute power over appropriations and that it may attach conditions upon the expenditure thereof. It follows that the General Assembly can appropriate state moneys conditioned upon the receipt of matching federal moneys.

Constitutional Law > Separation of Powers
Governments > Legislation > Enactment
[HN3] The Colorado Constitution merely states in effect that the legislature cannot exercise executive or judicial power; that the executive cannot exercise legislative or judicial power; and that the judiciary cannot exercise executive or legislative power. It does not prescribe exact limits of the respective powers. The dividing lines between the respective powers are often in crepuscular zones, and, therefore, delineation thereof usually should be on a case-by-case basis.

Constitutional Law > Separation of Powers
Governments > Legislation > Enactment
[HN4] The legislative power is the authority to make laws and to appropriate state funds. The enforcement of statutes and administration thereunder are executive, not legislative, functions. The power of the Colorado General Assembly to make appropriations relates to state funds. Custodial funds are not state moneys. Federal contributions are not the subject of the appropriative power of the legislature.

SYLLABUS

Action by State Senators to obtain declaration that exceptions of Governor to "Long Bill" which provided for payment of expenses of executive and judicial departments of state and its agencies and institutions for and during fiscal year beginning July 1, 1971, were improper vetoes, and the Governor counterclaimed. District court ruled substantially in favor of the Governor, but adversely in several particulars and the Governor appealed.

COUNSEL: David J. Hahn, C. Thomas Bastien, for plaintiffs-appellees.

Duke W. Dunbar, Attorney General, John P. Moore, Deputy, Jerry W. Raisch, Assistant, for defendant-appellant.

JUDGES: En Banc. Mr. Justice Groves delivered the opinion of the Court. Mr. Justice Hodges and Mr. Justice Erickson not participating.

OPINION BY: GROVES

OPINION

[*220] [**609] In the spring of 1971, the General Assembly of Colorado adopted the so-called "Long Bill," to provide for the payment of the expenses of the executive and judicial departments of the state and of its agencies and institutions for and during the fiscal year beginning July [***2] 1, 1971. The Governor approved the bill, but with a number of exceptions. The plaintiffs, who were State Senators, brought this action in the district court to obtain a declaration that the exceptions of the Governor were improper vetoes. The Governor counterclaimed, alleging that a rather large number of attempts by the General Assembly to limit appropriations in the bill were in violation of *Colo. Const. art. III* (separation [**610] of powers) and art. V, § 32. The trial court ruled substantially in favor of the Governor, but adversely in several particulars.

One of the adverse rulings concerned § 2(d) of the bill, a portion of which read as follows:

". . . Any federal or cash funds received by any agency in excess of the appropriation shall not be expended without additional legislative appropriation."

The trial court made the following ruling:

"The Court finds that the veto of subsection 2(d) was improper because the matters contained therein do not represent items subject to veto; and, moreover, because the purpose of this subsection is merely to explain the meaning of certain portions of the Bill itself and therefore constitutes a condition inseparably connected [***3] to all the appropriations to which it applies. The Court further finds that the General [*221] Assembly has the authority to appropriate the federal funds to which this subsection applies."

This ruling is the sole matter before us. We hold that the legislative limitation was in violation of the constitutional doctrine of separation of powers and, therefore, we reverse.

Colo. Const. art. III provides that:

"[HN1] The powers of the government of this state

are divided into three distinct departments, -- the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted."

The parties are in agreement that, subject to constitutional limitations, [HN2] the General Assembly has plenary or absolute power over appropriations and that it may attach conditions upon the expenditure thereof. It follows that the General Assembly can appropriate state moneys conditioned upon the receipt of matching federal moneys.

In contrast, there is not here involved any appropriation [***4] of state funds. Rather, § 2(d) is an attempt to limit the executive branch in its administration of federal funds to be received by it directly from agencies of the federal government and unconnected with any state appropriations. In fact such funds, to be received in the future, may often be unanticipated or even unknown at the time of the passage of the bill.

[HN3] The Colorado Constitution merely states in effect that the legislature cannot exercise executive or judicial power; that the executive cannot exercise legislative or judicial power; and that the judiciary cannot exercise executive or legislative power. It does not prescribe exact limits of the respective powers. The dividing lines between the respective powers are often in crepuscular zones, and, therefore, delineation thereof usually should be on a case-by-case basis. *State ex rel. Meyer v. State Board of Equalization and Assessment, 185 Neb. 490, 176 N.W.2d 920 (1970).*

[HN4] The legislative power is the authority to make laws [*222] and to appropriate state funds. The enforcement of statutes and administration thereunder are executive, not legislative, functions. *Springer v. Philippine Islands, 277 U.S.* [***5] *189, 48 S.Ct. 480, 72 L.Ed. 845 (1928).*

The power of the General Assembly to make appropriations relates to state funds. *Bedford v. People, 105 Colo. 312, 98 P.2d 474 (1939).* Custodial funds are not state moneys. *Stong v. Industrial Commission, 71 Colo. 133, 204 P. 892 (1922).* As we read *Bedford v. People, supra,* it supports the proposition that federal contributions are not the subject of the appropriative power of the legislature.

The appellees have made the argument that § 2(d) was not an item subject to the veto power conferred by *Colo. Const. art.* [**611] *IV, § 12,* and the Attorney General has not taken issue. We do not reach the question in the light of our ruling that the limitation was void, irrespective of a veto. Neither do we reach the following other issues which have been argued: (1) that, by reason of a number of statutes which grant power to the Governor, he should not be so limited; (2) that the legislative limitation conflicts with federal legislation making the funds available to the state; and (3) that the limitation is void by reason of conflict with *Colo. Const. art. V, § 32.* We simply hold that § 2(d) is unconstitutionally void as [***6] an infringement upon the executive function of administration.

In the one particular here considered, the declaration of the district court is reversed.

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