IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

DANNY HOMAN, WILLIAM A. DOTZLER, JR., BRUCE HUNTER, DAVID JACOBY, KIRSTEN RUNNING-MARQUARDT, and DARYL BEALL,	:	
	:	**NO. CVCV008796**
Plaintiffs,	:	
	:	**RULING ON MOTIONS FOR SUMMARY JUDGMENT**
vs.	:	
TERRY E. BRANSTAD,	:	
Defendant.	:	

BE IT REMEMBERED, the above matter came on for hearing on the 21st day of November, 2011 before the undersigned, Judge of the Fifth Judicial District of Iowa, on the Motions for Summary Judgment filed by the parties. The Plaintiffs were represented at the hearing by Mark T. Hedberg, Nathaniel R. Bolton, and Erin Benoy and the Defendant was represented at the hearing by Richard J. Sapp and Ryan G. Koopmans. The Court, having reviewed the file and considered the arguments of counsel, enters the following Ruling.

The issues in this case arise out of a dispute between the legislature and the Governor regarding the best method for delivering services to individuals in search of employment. Legislation enacted in the final days of the Eighty-Fourth General Assembly's legislative session reinforced a delivery system for such employment services originating in staffed field offices. Because Governor Branstad believes such services can be more effectively provided by establishing multiple computer kiosks, he vetoed certain provisions of the legislation. Plaintiffs challenge the item vetoes exercised by the Governor.

I. Summary Judgment

This case came before the Court, by agreement of the parties, on opposing motions for summary judgment. It is generally recognized that item veto cases are

appropriate for summary disposition in this manner, as "the ultimate question of whether the excised portion was subject to item veto is always a question of law".[1]

Defendant objects, however, to an affidavit submitted by Plaintiffs in support of their Motion for Summary Judgment.[2] Defendant argues in his Motion to Strike that the affidavit contains "irrelevant and argumentative political comment, irrelevant and inadmissible hearsay, legal conclusions, and post-hoc political statements of alleged legislative 'intent'".[3] Plaintiffs urge that the affidavit provides background information "as additional material fact, outlining the legislative history of SF 517".[4]

In typical summary judgment cases a court may consider, among other items, "supporting and opposing affidavits" in determining whether there are any genuine issues as to any material facts.[5] In item veto cases, there are very few "adjudicative facts" which "establish the factual predicate for application of legal issues relevant to the particular case".[6]

In this case, as is the situation in most item veto cases, the parties do not disagree on any of the "adjudicative facts". The undersigned finds that it is unnecessary to consider the "facts" set forth in the offered affidavit in determining whether the challenged item vetoes were appropriate. Accordingly, the Defendant's Motion to Strike is sustained.

II. Item Vetoes – Generally

Iowa voters granted the Governor item veto power with the ratification of an amendment to our constitution in 1968. The item veto amendment, Iowa Constitution Art. 3, §16, provides:

---

[1] *Welsh v. Branstad*, 470 N.W.2d 644, 647 (Iowa 1991).
[2] Plaintiffs submitted the Affidavit of William A. Dotzler, Jr., a legislator.
[3] Defendant's Motion to Strike the Affidavit of William A. Dotzler, Jr., filed October 17, 2011.
[4] Plaintiffs' Resistance to Defendant's Motion to Strike Affidavit, filed November 7, 2011.
[5] Iowa R.Civ.P. 1.981(1).
[6] *Welsh*, 470 N.W.2d at 644.

> The governor may approve appropriation bills in whole or in part, and may disapprove any item of an appropriation bill; and the part approved shall become a law. Any item of an appropriation bill disapproved by the governor shall be returned, with his objections, to the house in which it originated, or shall be deposited by him in the office of the secretary of state in the case of an appropriation bill submitted to the governor for his approval during the last three days of a session of the general assembly, and the procedure in each case shall be the same as provided for other bills. Any such item of an appropriation bill may be enacted into law notwithstanding the governor's objections, in the same manner as provided for other bills.

Pursuant to our state constitution "the Legislative authority of this State shall be vested in a General Assembly"[7]. To insure that this delegation of power is maintained, "the item veto power is to be construed narrowly, and any doubt over the extent of the power 'should be resolved in favor of the traditional separation of governmental powers and the restricted nature of the veto'".[8] The item veto power is a limited, negative power. "The Governor may not distort, frustrate or defeat the legislative purpose by a veto of proper legislative conditions, restrictions, limitations or contingencies placed upon an appropriation and permit the appropriation to stand. He would thereby create new law, and this power is vested in the Legislature and not in the Governor."[9]

Litigation in Iowa regarding item vetoes has generally been limited to two issues: whether the bill is an appropriation bill, and whether the portion of the bill that has been vetoed constitutes an "item" that may be separately vetoed. Both parties agree that SF 517 is an appropriation bill. They disagree on the issue of whether the item vetoes were appropriately exercised.

An "item" which may be appropriately vetoed is "something that may be taken out of a bill without affecting its other purposes and provisions. It is something which can be

[7] Iowa Const. art. III, §1.
[8] *Rants v. Vilsack*, 684 N.W.2d 193, 202 (2004) (citing *Wood v. State Administrative Board*, 238 N.W. 16, 18 (Mich. 1931)).
[9] *State ex rel. Sego v. Kirkpatrick*, 524 P.2d 975, 981-2 (N.M. 1974).

lifted bodily from it rather than cut out. No damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom."[10]

There are several types of "items" that may permissibly be vetoed by the Governor in the exercise of his item veto powers.[11] Clearly, a specific monetary appropriation appearing on the face of the bill may be vetoed. Furthermore, it is uniformly recognized that a separate "item" in an appropriation bill may be vetoed by the Governor even if it does not allocate money.[12] Thus, an unrelated substantive piece of legislation that has been incorporated in an appropriation bill, a "rider", may be item vetoed.[13] Finally, a specific limitation that the legislature has placed on the use of a monetary appropriation, a proviso or "condition", may be vetoed, but only if the corresponding monetary appropriation is also vetoed. "If a governor may veto a legislatively-imposed qualification upon an appropriation but let the appropriation itself stand, he may alter and thus, in fact, legislate", in violation of the Iowa Constitution.[14]

A determination whether a particular limitation rises to the level of a "condition" must be made on a case-by-case basis. No magic language is necessary. However, if the legislature intends to attach a condition to an appropriation they must make their intent clear. It has been observed that the "legislature must provide the court with clear language establishing the necessary legal foundation" for a limitation to be considered a "condition". [15]

A condition may be affirmative or negative in the restrictions it imposes.[16] In attempting to distinguish between a "condition" and a "rider" it is necessary to evaluate

---

[10] *Commonwealth v. Dodson*, 11 S.E.2d 120, 124 (Va. 1940)
[11] *Rants*, 84 N.W.2d at 205.
[12] *Welsh*, 470 N.W.2d at 649-50; *Colton v. Branstad*, 372 N.W.2d 184, 190 (Iowa 1985); *Weldon v. Ray*, 229 N.W.2d 706, 714 (Iowa 1975); *Turner*, 186 N.W.2d 141, 150-52 (Iowa 1971).
[13] *Colton*, 372 N.W.2d, at 189; *Rants*, 684 N.W.2d at 205.
[14] *Weldon*, 329 N.W.2d at 710 (citing Iowa Const. art. III, §1).
[15] Brent R. Appel, Item Veto Litigation in Iowa: Marking the Boundaries Between Legislative and Executive Power, 41 Drake L.Rev. 1, 19 (1992).
[16] *Weldon*, 229 N.W.2d at 710.

whether the restriction "limit[s] or direct[s] the use of" the appropriation.[17] A condition qualifies an appropriation.[18] If the condition is "inseparably connected to the appropriation" it may be vetoed only if the appropriation is also vetoed.[19]

III. Item Vetoes to SF 517

Resolution of the conflict in the case at bar requires a determination of whether the "items" vetoed by the Governor are riders appropriately subject to item veto, or "conditions", which may be vetoed only when accompanied by a veto of the underlying appropriation. Each of the item vetoes must be considered individually. The relative merit of the parties' respective proposals for the delivery of employment services has no bearing on the ultimate outcome of the pending litigation. The only issue before the court is whether Governor Branstad constitutionally exercised his item veto powers.

Senate File 517 (SF 517), an act relating to appropriations for the Department of Cultural Affairs, the Department of Economic Development, the Board of Regents, the Department of Workforce Development, the Iowa Finance Authority, and the Public Employment Relations Board, was duly passed and enrolled by the Iowa General Assembly on June 30, 2011. The General Assembly adjourned *sine die* on the same date.

SF 517 contains a number of appropriations, for a variety of purposes, to the multiple departments and agencies. The provisions in dispute in this case are included in Divisions I and IV of SF 517. Division I covers appropriations for fiscal year 2011-2012, while Division IV contains substantially comparable appropriations for fiscal year 2012-2013.[20]

[17] *Colton*, 372 N.W.2d at 189.
[18] *Turner*, 186 N.W.2d at 150.
[19] *Weldon,* 229 N.W.2d at 713; *Wisconsin Telephone Co. v. Henry*, 260 N.W. 486, 490 (Wis. 1935).

A. No Reduction in Number of Field Offices

Division I, Section 15 of SF 517 contains appropriations from the general fund of the state to various divisions of the department of workforce development. Paragraph 3 of that section, comprised of subparagraphs (a), (b), and (c), provides as follows:

> "3. WORKFORCE DEVELOPMENT OPERATION
>
> a. For the operation of field offices, the workforce development board, and for not more than the following full-time equivalent positions:
>
> . . . . . .$ 8,671,352
>
> . . . . . FTEs 130.00
>
> b. Of the moneys appropriated in paragraph "a" of this subsection, the department shall allocate $8,660,480 for the operation of field offices.
>
> c. The department shall not reduce the number of field offices below the number of field offices being operated as of January 1, 2009.[21]

Governor Branstad utilized his item veto power to strike only subparagraph (c) from paragraph 3, evidencing the veto by crossing through subparagraph (c) in its entirety and initialing it.

In the transmittal letter accompanying SF 517[22] Governor Branstad explained his opposition to requiring field offices to remain open:

> "This item would prohibit Iowa Workforce Development ("IWD") from putting forth an enhanced delivery system that broadens access to Iowans across the state in fiscal year 2012. In order to develop a sustainable delivery system, in light of continually fluctuating federal funding, the department must put forth a system that embraces the use of technology while providing enhanced benefits through maximum efficiencies. At this time, IWD has over one hundred ninety virtual access point workstations in over sixty new locations throughout the state in order to increase access to these critical services. Iowans are already utilizing expanded hours of operations, six days a week. At my direction,

---

[20] Governor Branstad also utilized his line item veto power to strike §26 of SF 517. Plaintiffs do not challenge that veto.

[21] A similar provision is found in Section 61, Paragraph 3, in Division IV of SF 517, relating to fiscal year 2012-2013. Governor Branstad vetoed that provision as well.

[22] The Governor's transmittal letter, dated July 27, 2011, is attached to the Plaintiffs' Petition as Exhibit B.

> IWD will have hundreds of additional virtual access points by the end of fiscal year 2012."

Plaintiffs contend this item veto constitutes an impermissible veto of a condition without a veto of the corresponding appropriation. Defendant contends the veto was a valid exercise of the item veto power.

In support of his position, the Governor urges that the facts and analysis in *Turner*[23] are analogous and controlling. In *Turner* the legislature enacted House File 823 (HF 823), which provided appropriations from the primary road fund to the State Highway Commission and included specified allocations for various Highway Commission operations. Included in HF 823 was Section 5, which provided:

> "The permanent resident engineers' offices presently established by the State Highway Commission shall not be moved from their locations, however, the Commission may establish not more than two temporary resident engineers' offices within the State as needed."[24]

After concluding that the item veto provision does not require that the item vetoed be an appropriation "of money", the Court turned to an analysis of whether the vetoed provision constituted a "condition". In doing so, a comparison was made to a limiting provision contained in Section 4 of the same Act. Section 4 provided: "No moneys appropriated by this Act shall be used for capital improvements, but may be used for overtime pay of employees involved in technical trades."

In contrasting the two sections of the Act the Court noted:

> "section 5 places no prohibition against the use of any moneys appropriated by the act for the moving of permanent resident engineers' offices presently established by the defendant commission. Had such language as used in section 4 been employed in section 5 we are impelled to the view that section 5 would have in such case been a proviso or condition upon the expenditure of the funds appropriated, but lacking such phraseology it obviously is not."[25]

---

[23] *State ex rel. Turner v. Iowa State Highway Commission*, 186 N.W.2d 141 (Iowa 1971).
[24] *Id.* at 149.
[25] *Id.* at 150.

An opposite result was reached by the Court in *Weldon*.[26] There the Court concluded that each of the vetoed clauses was a qualification upon a particular appropriation and could not be vetoed without vetoing the corresponding appropriations. Several of the vetoed provisions in Weldon involved specific designations of the number of positions being financed by the appropriation.[27] Another of the vetoed provisions provided: "funds appropriated by this section shall not be used to supplement the construction of new buildings".[28] The Court noted that "each of the clauses involved in the acts before us is a qualification upon the particular appropriation" and concluded that "the Governor could not let the appropriation stand yet nullify the condition upon which the legislators gave their consent to the expenditure."[29]

In the case at bar the legislature, in Division IV, Section 65, paragraph 3, subparagraph (b) allocated "$8,660,480 for the operation of field offices" and in subparagraph (c) recited that "the department shall not reduce the number of field offices below the number of field offices being operated as of January 1, 2009." While the restriction on the allocated funds does not appear in the same sentence as the appropriation, as was the situation with the appropriations in *Weldon*, it is clear from the context of the bill that the vetoed language was intended by the legislature to be "a qualification upon the particular appropriation".[30]

The facts in the case before the court may be distinguished from those in *Turner*. In *Turner* the vetoed provision placed "no prohibition against the use of any moneys appropriated by the act".[31] By contrast, in the case at bar, subparagraph (c)

---

[26] *Weldon v. Ray*, 229 N.W.2d 706 (Iowa 1975).
[27] Vetoed provisions included: "for not to exceed seventy-two permanent full-time positions"; "however, in no event, shall this include more than three additional employees"; and "for a total of not to exceed five hundred twenty-four authorized full time positions of which not more than four hundred eighty-one are to be filled at one time". *Id.* at 708-09.
[28] *Id.* at 708.
[29] *Id.* at 714.
[30] *Id.*
[31] *Turner*, 186 N.W.2d at 150.

specifically identified the appropriation to which the limiting language was intended to apply: the appropriation for the operation of field offices.

The phrase that was vetoed by the Governor qualified, limited and directed the use of the allocation "for the operation of field offices". The prohibition against reducing the number of field offices was inseparably connected to the appropriation. Had the legislature not placed this limitation on the number of field offices it was financing, it may have allocated less money for their operation. "The Governor [can] not let the appropriation stand yet nullify the condition upon which the legislators gave their consent to the expenditure."[32]

This affirmative qualification on the appropriated funds could not be vetoed by the Governor without a veto of the corresponding appropriation. Accordingly, Governor Branstad's attempted item vetoes of Division I, Section 15, paragraph 3(c), and of Division IV, Section 61, paragraph 3(c), were improper and ineffective.

B. Definitions of Field Offices and Workforce Development Centers

In Division I, Section 15, paragraph 5 of SF 517 the general assembly sought to provide definitions for "field offices" and "workforce development centers" as follows:

> 5. DEFINITIONS
>
> For purposes of this section:
>
> a. "Field office" means a satellite office of a workforce development center through which the workforce development center maintains a physical presence in a county as described in section 84B.2. For purposes of this paragraph, a workforce development center maintains a physical presence in a county if the center employs a staff person. "Field office" does not include the presence of a workforce development center maintained by electronic means.

[32] *Weldon*,229 N.W.2d at 714.

b. "Workforce development center" means a center at which state and federal employment and training programs are collocated and at which services are provided at a local level as described in section 84B.1.

Governor Branstad utilized his item veto power to strike paragraph 5, in its entirety, from the legislation.[33] In his transmittal letter the Governor suggested that the delivery system defined by the legislature would "prevent growth and progress in serving Iowans".

The definitions contained in SF 517 result in a change to current Iowa law related to the operation of the Department of Workforce Development. Existing Iowa Code section 84B.1 provides that the department of workforce development, in consultation with other agencies, shall establish guidelines for employment and training programs "in centers providing services at the local level" known as "workforce development centers".[34] The section obligates the centers to provide a variety of services including the provision of information, assessment, training, referral services and job development and job placement.

Iowa Code section 84B.2 dictates that workforce development centers "shall be located in each service delivery area[35] and specifically directs that each center "shall also maintain a presence, through satellite offices or electronic means, in each county located within that service delivery area."[36] Nowhere in existing Chapter 84B is the term "field offices" mentioned or defined.[37]

The definitions contained in Section 15, paragraph 5 of SF 517 (and the corresponding provision in Division IV related to fiscal year 2012-2013) redefine the local

[33] A similar provision is found in Section 61, Paragraph 5, in Division IV of SF 517, relating to fiscal year 2012-2013. Governor Branstad vetoed that provision as well.
[34] Iowa Code §84B.1 (2011).
[35] A "service delivery area" is defined in Iowa Code §260C.2 (5) and is connected to the location of community colleges within the state.
[36] Iowa Code §84B.2 (2011).
[37] Although Iowa Code §96.51, enacted in 2005, created a "field office operating fund" to be used by the department of workforce development for "costs of operating field offices", nowhere in the Code is the term "field office" defined.

county offices as “field offices” and expressly eliminate the possibility of providing a “presence” by “electronic means”. The legislative enactment vetoed by the Governor specifically requires that a staff person be employed at the county level. Defendant argues these definitions constitute a “rider” which may be independently vetoed without a veto of the appropriation to which it is attached.

Read in the context in which they were enacted, the legislative limitations embodied in the definitions contained in the vetoed provisions were clearly intended by the legislature to apply directly to the funds appropriated “for the operation of field offices”. With the use of the phrase “in this section” the legislature evinced an intent to place restrictions on the use of the appropriations it made earlier in the section. Moreover, if the definitions contained in Section 15, paragraph 5, were vetoed, eliminating any statutory definition for a “field office”, the appropriation contained in Section 15, paragraph 3 “for the operation of field offices” would be meaningless.

This conclusion is bolstered by the presence of the definitions in both Division I and Division IV of SF 517. In both instances the definitions are enacted “for purposes of this section”. Had the legislature simply intended to change the definitions contained in Iowa Code Chapter 84B there would have been no need to include the definitions in each of the two divisions. Instead, the legislature defined the “field offices” for which they made a specific allocation of funds for each of the separate fiscal years elsewhere in the same section.

The item veto power, although granting a limited legislative function to the Governor, is a negative power. By its proper exercise, the Governor may delete or destroy an item in an appropriation bill. The Governor may not, by the exercise of the power, “alter, enlarge or increase the effect” of legislation.[38]

[38] *Sego,*524 P.2d at 981.

In the context in which they were included in SF 517 the definitions for "field office" and "workforce development center" constituted qualifications and limitations on the use of the funds specifically appropriated "for the operation of field offices". To allow those definitions to be stricken would empower the governor to "distort, frustrate or defeat the legislative purpose. . . He would thereby create new law, and this power is vested in the Legislature and not in the Governor." [39]

Because he failed to veto the $8,660,480 appropriation conditioned by the definitions in Division I and the $4,330,240 appropriation conditioned by the definitions in Division IV, Governor Branstad's item vetoes of Division I, Section 15, paragraph 5 and Division IV, Section 61, paragraph 5, were ineffective.

C. National Career Readiness Certificate Program

In Division I, Section 20 the legislature sought to restrict the use of money as follows:

> Sec. 20. APPROPRIATIONS RESTRICTED. The department of workforce development shall not use any of the moneys appropriated in this division of this Act for purposes of the national career readiness certificate program.

Governor Branstad utilized his item veto power to strike this provision in its entirety.[40] In his transmittal letter Governor Branstad elaborated on his objection to the legislative prohibition against using the National Career Readiness Certificate program:

> "The National Career Readiness Certificate program is an Iowa-based product which is an assessment and skill development tool that has been embraced by over 400 Iowa employers as an exceptional tool for demonstrating skill for a potential employee. It is recognized nationally by both the Executive Office of the President and the U.S. Department of Labor as a reliable and portable tool for job seekers to present and certify their skills. I cannot agree with the denial to IWD of the potential use of this program."

[39] *Id.*

[40] An identical provision is found in Section 66 in Division IV of SF 517, relating to fiscal year 2012-2013. Governor Branstad vetoed that provision as well.

As counsel for the Defendant acknowledged at the argument on the motions for summary judgment, the conditional language related to the National Career Readiness Certificate program is arguably the strongest conditional language of any of the vetoed provisions. The vetoed sections bear the heading: "APPROPRIATIONS RESTRICTED".

Defendant argues that the restriction related to the National Career Readiness Certificate program was overly broad by including "any of the moneys appropriated in this Division of this Act". Defendant suggests that by linking the restriction to all of the appropriations "in this Division" he would be forced to veto "virtually every appropriation in SF 517".[41]

In fact, the condition related to the national career readiness certificate program applies only to funds in the hands of the Department of Workforce Development, the agency that utilized the program. Even with this restriction, however, the condition is tied to a number of different and unrelated appropriations made to the Department of Workforce Development.[42]

"The legislature may not block item veto by attaching 'unrelated riders' to an appropriation."[43] Only if the condition is "inseparably connected to the appropriation" must the appropriation also be vetoed.[44]

Unlike the two vetoed limitations discussed above, which were specifically limited and tied only to the appropriation "for the operation of field offices", the restriction on the use of appropriations contained in Section 20 is linked to all of the different and unrelated appropriations made to the Department of Workforce Development. Thus,

---

[41] Reply Brief in Support of Defendant's Cross-Motion for Summary Judgment, p. 4.
[42] Included in the appropriations to the Department of Workforce Development in Division I was $3,495,440 allocated to the Division of Labor Services, $2,949,044 allocated to the Division of Workers' Compensation, $284,464 allocated to the Offender Reentry Program, $1,217,084 allocated to the Employment Security Contingency Fund, $4,238,260 allocated to the Unemployment Compensation Reserve Fund, and $451,458 allocated to the General Fund for an employee misclassification program.
[43] *Welsh*, 470 N.W.2d at 649.
[44] *Weldon,* 229 N.W.2d at 713; *Henry*, 260 N.W. at 490.

while it is not related to many of the appropriations to which it is attached, if it is a "condition" and not a separate item the Governor would be forced to veto all of the unrelated appropriations to legitimately veto this restriction. The concept of an "item" in an appropriation bill must be interpreted to avoid such a result.[45]

Although this provision places explicit qualifications and limitations on the use of the appropriated funds, it is overly broad in the appropriated funds to which it is attached. It therefore must be considered to be a rider, and not an item, for item veto analysis purposes. Accordingly, Governor Branstad's item vetoes of Division I, Section 20 and of Division IV, Section 66, were effective and should be upheld.

IV. Consequences of Improper Vetoes

The parties disagree as to the impact of the finding made herein that the Governor exceeded his authority in his failed attempts to veto parts of this appropriation bill which are not "items". Plaintiffs argue that under these circumstances "no provision of SF 517 passed into law".[46] Defendant argues that an ineffective item veto simply results in the portion that was improperly vetoed becoming law.

In *Turner*, the Court noted:

> "In Iowa our Constitution does not require the Governor's affirmative approval of a bill before it becomes a law, but, conversely, does require the Governor's affirmative disapproval in exercising the veto power. It necessarily follows therefore that should the Governor of Iowa exceed his authority and attempt to disapprove an item in a nonappropriation bill, or to disapprove part of an appropriation bill which is not in and of itself an 'item', the natural result would be that the bill as a whole would become law as though he had approved it or had failed to exercise the affirmative disapproval required by our Constitution."[47]

As the Court subsequently noted in *Rants*, however, the *Turner* decision "overlooked the importance of the timing of a governor's consideration of a bill and, in

[45] *Colton*, 372 N.W.2d at 192.
[46] Brief in Support of Motion for Summary Judgment, p. 18, citing *Rants*, 684 N.W.2d at 193.
[47] *Turner*, 186 N.W.2d at 151.

fact, misstated the effect a governor's failure to approve a bill will have depending on the point at which the governor is considering the bill."[48]

A bill passed during the legislative session and presented to the governor prior to the "last three days" automatically becomes law unless the governor returns the bill with a veto within three days.[49] A bill passed and presented to the governor during the last three days of the legislative session, however, only becomes law upon the affirmative approval of the governor, which must occur within 30 days of its presentation to him.[50] If the governor does not affirmatively approve the legislation within the 30 day period the bill fails, just as if he had exercised his pocket veto.

Turner involved an appropriation bill presented prior to the last three days of the session. Such a bill would automatically become law unless vetoed by the governor within three days of its presentation to him. As the Court in *Rants* noted, "had the Governor impermissibly exercised his item veto authority during the period in which his general veto power was in effect, thus effectively failing to veto any provision, the bill would have become law automatically."

Rants involved what the Court ultimately determined was *not* an appropriation bill, presented to the governor during the last three days of the session. Under that circumstance, the governor had three options: 1. Approve the bill, 2. Exercise his pocket veto, disapproving the bill, or 3. Do nothing, in which case the bill would lapse, effectively disapproving it. Because the governor in *Rants* ineffectively attempted to exercise an item veto, on a nonappropriation bill, he neither approved the bill nor timely exercised his pocket veto and the result was a failure of the bill in its entirety.

In the case at bar both parties agree that SF 517 is an appropriation bill that was passed and presented to the governor during the last three days of the session. Per our

[48] *Rants*, 684 N.W.2d at 210.
[49] Iowa Const. art. III, §16.

Constitution, "the governor may approve appropriation bills in whole or in part."[51] In his transmittal letter Governor Branstad timely, affirmatively approved SF 517, stating "Senate File 517 is approved on this date with the following exceptions, which I hereby disapprove." Thus, the Governor affirmatively approved SF 517 in its entirety, with the exception of his item vetoes. His attempts at item vetoes in excess of his authority were a nullity. The bill thus became law as if he had not exercised the item vetoes which were herein determined to be invalid.

IT IS THEREFORE ORDERED that each of the parties' Motions for Summary Judgment is sustained, in part. Governor Branstad's attempted item vetoes of Division I, Section 15, paragraph 3(c), Division IV, Section 61, paragraph 3(c), Division I, Section 15, paragraph 5, and Division IV, Section 61, paragraph 5, were ineffective. The Governor's attempts at those item vetoes, in excess of his authority, were a nullity. Governor Branstad's vetoes of Division I, Section 20 and Division IV, Section 66, were legal and effective. Senate File 517 became law as if the Governor had not exercised the item vetoes which were herein determined to be invalid.

Dated this _____ day of December, 2011.

_____
Brad McCall
Judge – Fifth Judicial District

Original Filed

Copies to: Mark T. Hedberg and Nathaniel R. Boulton, Attorneys for Plaintiffs
mark@hedberglaw.com
nboulton@hedberglaw.com

Richard J. Sapp and Ryan G. Koopmans, Attorneys for Defendant
rjs@nyemaster.com
rkoopmans@nyemaster.com

[50] *Id.*
[51] Iowa Const. art. 3, §16.