OPINIONS OF ATTORNEY GENERAL AND LEGISLATIVE COUNSEL HOLDING THAT THE CONDITIONAL APPROVAL OF CHAPTER 1575 IS WITHOUT EFFECT EXCEPT AS TO REDUCTION OF APPROPRIATION

At a meeting of the Assembly Interim Committee on Water Pollution held in Sacramento on September 7, 1949, the Chairman was directed to request the opinions of the Attorney General and the Legislative Counsel with respect to the effect and validity of the conditional approval of Chapter 1575. The following letter was addressed to the Attorney General and a similar oral request was placed with the Legislative Counsel.

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RANDAL F. DICKEY
FOURTEENTH DISTRICT

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COMMITTEE ON WATER POLLUTION AND INDUSTRIAL WASTE

COMMITTEES
CONSERVATION AND PLANNING
CONSTITUTIONAL AMENDMENTS
GOVERNMENTAL EFFICIENCY AND ECONOMY
JUDICIARY
PUBLIC MORALS
RULES

Assembly
California Legislature

September 13, 1949

ADDRESS REPLY TO:
2129 Grove Street
Oakland 12, Calif.

Frederick N. Howser
Attorney General
State of California
State Building
Los Angeles, California

Dear Mr. Howser:

In accordance with a resolution adopted by the Assembly Interim Committee on Water Pollution, this letter is written to request your opinion as to the effect and validity of the objection stated by Governor Warren in approving Assembly Bill No. 2033 enacted at the last legislative session (Chapter 1575, Statutes of 1949).

There is no question regarding the reduction of the amount of money appropriated in the act. However, the additional language in the Governor's objection, which appears to be intended to restrict the usage of these funds beyond the intent of the law as enacted by the Legislature, is questioned by the Committee.

In drafting this legislation the committee members fully realized that "the technical problems of disposal of sewage, garbage and industrial waste" are in fact a single and inseparable problem, and a single amount was appropriated for this certain purpose. For instance, it may be pointed out that the problems of garbage disposal which are of most importance to the cities of California today arise from the water-borne garbage which inevitably is comingled with, and must be treated with, sewage and industrial waste.

Realizing this, the Committee did not attempt to make separate appropriations for what might appear to be three separate problems, and the question is now but as to whether the Governor, by declaring his detailed objection, can do so. That the Governor's stated "intention" is actually contrary to the intent of the Legislature may be concluded from the fact that a bill (Assembly Bill 1580) to appropriate funds for a restricted research in garbage disposal was refused passage.

In its formal resolution the Committee has expressed its belief that the Governor's limitation, if valid, would result in a wasteful expenditure of State funds, and would as well establish a dangerous precedent under which the enactments of the Legislature would be subject to substantive alteration and modification short of veto by the Governor. For these reasons the Committee requests your opinion as to the validity of this portion of the Governor's objection.

Very truly yours,

RANDAL F. DICKEY, Chairman
Assembly Committee on Water Pollution

RFD:jw

OPINION OF ATTORNEY GENERAL

(COPY)

OFFICE OF THE ATTORNEY GENERAL
Sacramento 14, California

FRED N. HOWSER
Attorney General

OPINION of Fred N. Howser Attorney General E. G. Benard Assistant Attorney General	49 214 Nov. 1, 1949

THE ASSEMBLYMAN FROM THE 14TH DISTRICT has presented the following question

> What is the effect and validity of the action of the Governor, when in approving A. B. 2033 (Ch. 1575, Stats. 1949) he reduced the amount of the appropriation from $100,000 to $50,000 and stated it was his intention to provide the entire amount remaining for research in the disposal of garbage and that he did not intend to provide anything for research in the disposal of sewage or industrial waste?

Our conclusions may be summarized as follows

A. B. 2033 (Ch. 1575, Stats. 1949) is a valid appropriation bill containing but one item of appropriation and that for one single and certain purpose as required by Article IV, sec. 34 of the Constitution. The reduction in the amount of the appropriation was valid but the declaration of intention has no force or effect on the other provisions in the bill.

ANALYSIS

The Assemblyman of the 14th District, in accordance with a resolution adopted by the Assembly Interim Committee on Water Pollution, has requested our opinion as to the effect and validity of the objection stated by Governor Warren in approving Assembly Bill No. 2033, which became Chapter 1575, Statutes 1949. A. B. 2033 as passed by both houses of the Legislature and presented to the Governor on July 2, 1949, read as follows

> "An act making an appropriation for research in technical problems of disposal of sewage, garbage and industrial waste, declaring the urgency thereof, to take effect immediately
>
> The people of the State of California do enact as follows
>
> Section 1. There is hereby appropriated to the Regents of the University of California, out of any money in the State Treasury not otherwise appropriated, the sum of one hundred thousand dollars ($100,000), to be available for expenditure by the Regents of the University of California until June 30, 1951, in providing for and carrying on research relating to the technical problems of disposal of sewage, garbage and industrial waste and for the dissemination of such research information to all persons within the State affected by or interested therein
>
> Sec. 2. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are
>
> The rapid growth of cities and industry in California has created conditions of imminent hazard to the public health and welfare through the inadequacy of existing methods for the sanitary disposal of garbage, sewage and industrial waste
>
> Since in many areas of the State physical methods for such sanitary disposal, within economic limits are not known, it is essential that a program of research to determine those methods be undertaken at once."

In approving the bill on August 2, 1949, the amount of the appropriation was reduced to $50,000 and the following statement by the Governor was appended to the bill which became Chapter 1575, Statutes 1949

> "I object to the item of appropriation in Section 1 of Assembly Bill No. 2033 and I reduce the amount of said appropriation to fifty thousand dollars ($50,000). With this reduction I approve the bill
>
> "In making this reduction it is my intention to provide the entire amount for research in the disposal of garbage for the benefit of the cities counties and districts of the State, which I am informed can be accomplished for this amount in one year. I do not intend to provide anything for research in the disposal of sewage or industrial wastes, which research should be undertaken by one of the administrative agencies of the State because it is a continuing research activity extending over a period of years regarding a problem which is one for state administration. The state administrative agencies should have control over such research activities in order that the course for such studies may be such as to meet the needs of the state agencies
>
> EARL WARREN
> Governor"

The fifth paragraph of section 34 of Article IV of the Constitution provides

> "No bill making an appropriation of money, except the Budget Bill shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed."

On the authority of the recent case of *City of Los Angeles v. Post War Public Works Review Board*,

26 Cal (2d) 102, and the cases therein referred to, we are of the opinion that A B 2033 as presented to the Governor was a valid appropriation bill containing but one item of appropriation for one single and certain purpose as required by Article IV, sec 34 of the Constitution In City of Los Angeles v Post War Public Works Review Board, at pages 116 and 117, the Court said

"The act does not violate section 34 of Article IV of the Constitution providing that no bill making an appropriation of money, except a budget bill, shall contain more than one item of appropriation, and that item for a single and certain purpose to be expressed in the act It contains but one item of appropriation, the item of $10,000,000, to be devoted on a matching basis solely and exclusively to a program of public works engaged in by cities and counties in the prevention and relief of unemployment anticipated upon the cessation of international hostilities The fact that of the sum appropriated one specified part thereof *may be* expended for plans another for acquisition of sites and others for the cost of administration, does not defeat the singleness or certainty of the expressed purpose, nor does it constitute several distinct items of appropriation The language employed in the latter respect is not language of appropriation The appropriation was completed by the provision of section 6 setting aside $10,000,000 out of the moneys of the state treasury not otherwise appropriated *Chapman v Colgan*, 106 Cal 113, 117 (38 P 315, 39 P 437, 46 Am St Rep 221, 28 L R A 187) As in *Ryan v Riley* 65 Cal App 181, 187 (223 P 1027) there was a 'setting apart from the public revenues of a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purposes' It is an appropriation from the general fund as defined in *Ristine v State*, 20 Ind 328, 338

"Limitations and conditions imposed in the expenditure of the appropriated sums do not defeat the purpose of the appropriation The fact that the amount is to be expended in installments or for subsidiary objects looking to the execution of the primary purpose of the act, does not militate against singleness of appropriation or of object (See REGENTS OF UNIVERSITY OF CAL v RILEY, 199 Cal 506 (250 P 182), citing STATE v SLOAN, 66 Ark 575 (53 S W 47, 49, 74 Am St Rep 106), see, also PEOPLE v DUNN, 80 Cal 211 214 (22 P 140, 13 Am St Rep 118)) Singleness of appropriation and of object in this case distinguishes it from MURRAY v COLGAN, 94 Cal 435 (29 P 871), and cases following it, relied upon by the respondents Cases such as WOOD v RILEY, 192 Cal 293 (219 P 966), REARDON v RILEY, 10 Cal 2d 531 (76 P 2d 101), and others, were concerned with budget appropriation bills and the power of the governor to veto specific items or to modify the amount They are not controlling here The item of appropriation of $10,000,000 for the stated purpose of allocation to cities and counties to carry out the public works projects program to the end declared in the act is therefore one item of appropriation for the single and certain purpose expressed in the act"

The letter requesting our opinion states

"There is no question regarding the reduction of the amount of money appropriated in the act However, the additional language in the Governor's objection, which appears to be intended to restrict the usage of these funds beyond the intent of the law as enacted by the Legislature, is questioned by the Committee"

The sixth paragraph of section 34 of Article IV of the Constitution provides

"In any appropriation bill passed by the Legislature the Governor may reduce or eliminate any one or more items of appropriation of money while approving other portions of the bill, whereupon the effect of such action and the further procedure shall be as provided in Section 16 of this article"

Since the 1922 amendment to Article IV, section 34 of the Constitution there can be no question but that the Governor may reduce an item of appropriation whether such item of appropriation is contained in the Budget Bill or in a separate bill (see *Wood v Riley*, 192 Cal 293 at 299) In Opinion NS-411, addressed to former Governor Frank F Merriam, dated June 23, 1937, we concluded that the Governor had the authority to reduce an appropriation contained in a single appropriation bill Section 16 of Article IV referred to in the above quotation from section 34 of Article IV deals with the manner of passage of bills before the Legislature and the matter of signing or veto thereof by the Governor

Inasmuch as A B 2033 is a single appropriation bill, such cases as Reardon v Riley 10 Cal (2d) 531, Railroad Commission v Riley 12 Cal (2d) 48, and Pomeroy v Riley, 12 Cal (2d) 166, dealing with the reduction or elimination of items of appropriation contained in the Budget Bill are not in point in this matter

The only authority conferred upon the Governor is to reduce the appropriation or veto the bill in its entirety The statement of intention by the Governor does not have the force or effect of law The statement of reasons for reducing the amount of the appropriation in no way affects the other provisions contained in the bill

In *Lukens v Nye* 156 Cal 498, at 503, in discussing the power of the Governor with reference to approval of a bill prior to the 1922 amendment of Article IV, section 34, when the Governor did not have the power to reduce an item of appropriation but could only approve or reject an entire item of appropriation, the Court said

"The same principles apply when the power of the governor as a legislative instrumentality is involved He may act only in the prescribed mode, and may exercise only the powers enumerated, or necessarily implied In the case of a bill containing several items of appropriation of money, he may approve one or more of them, and object to the others (Art IV, sec 16) In no other case is he empowered to modify or change the effect of a proposed law, or to do anything concerning it except to approve or disapprove it as a whole He cannot participate in the discussions or proceedings of either house, except by sending them a

veto message when a bill is disapproved. If he approve a proposed bill, his duty requires him to sign it as evidence of such approval. This approval, except in the single instance stated, must be of the bill as a whole, and without qualification Any attempt on his part to attach to his approval any qualification, or to withhold his consent to a part of the law and give it to other parts, will either be entirely nugatory and ineffectual, and leave the approval absolute, or it will completely nullify the approval and operate as a veto of the whole bill (*Porter* v. *Hughes*, 4 Ariz. 1, (32 Pac. 165); *State* v. *Holder*, 76 Miss 158, (23 South. 643).)"

In the annotation entitled "Disapproval of Governor of a bill in part or approval with modification" in 35 A L.R. 600, supplemented in 99 A.L.R 1277, where there is a full discussion of this problem as affected by particular Constitutional provisions in the different states, the opening paragraph of the annotation sets forth the general rule as follows:

> "Except as the executive is given the power to approve and disapprove parts of bills, he may not modify or change the effect of a proposed law, or do anything concerning it except to approve or disapprove it as a whole."

We are therefore of the opinion that the second paragraph of the Governor's statement setting forth his reasons or intentions is ineffectual to alter or change the remaining provisions of the bill

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OPINION OF LEGISLATIVE COUNSEL

(COPY)

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

FRED B WOOD
Legislative Counsel

FRANCES BARNEY
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Deputy in Charge
Los Angeles Office

Sacramento 2, California
September 21, 1949

Honorable Randal F. Dickey
2129 Grove Street
Oakland 12, California

EFFECT OF GOVERNOR'S ACTION ON CHAPTER 1575, STATUTES OF 1949 — #119

Dear Mr Dickey

QUESTION

You have directed our attention to Chapter 1575 (A B 2033) of the Statutes of 1949, an act making an appropriation for research in technical problems of disposal of sewage, garbage and industrial waste, declaring the urgency thereof, to take effect immediately, and to the action of the Governor thereon, and you have asked us whether, in our opinion, the Governor's action has the effect of restricting the scope of the research authorized to technical problems of disposal of garbage and of rendering the expenditure of any of the appropriation for research in problems of disposal of sewage and industrial waste improper as unauthorized

Section 1 of Chapter 1575 (comprising all of the chapter except the urgency section) provides.

"There is hereby appropriated to the Regents of the University of California, out of any money in the State Treasury not otherwise appropriated, the sum of one hundred thousand dollars ($100,000), to be available for expenditure by the Regents of the University of California until June 30, 1951, in providing for and carrying on research relating to the technical problems of disposal of sewage, garbage and industrial waste and for the dissemination of such research information to all persons within the State affected by or interested therein "

The Governor's action on the bill was as follows

"I object to the item of appropriation in Section 1 of Assembly Bill No 2033 and I reduce the amount of said appropriation to fifty thousand dollars ($50,000) With this reduction I approve the bill

"In making this reduction it is my intention to provide the entire amount for research in the disposal of garbage for the benefit of the cities, counties and districts of the State, which I am informed can be accomplished for this amount in one year. I do not intend to provide anything for research in the disposal of sewage or industrial wastes, which research should be undertaken by one of the administrative agencies of the State because it is a continuing research activity extending over a period of years regarding a problem which is one for state administration The state administrative agencies should have control over such research activities in order that the course for such studies may be such as to meet the needs of the state agencies."

OPINION

In our opinion, the Governor's action effectively reduces the amount of the appropriation made from $100,000 to $50,000, but does not restrict the scope of the research authorized to research in technical problems of garbage disposal so as to render expenditure of the $50,000 for research in problems of the disposal of sewage and industrial wastes unauthorized. In other words, we believe that the reason given by the Governor for his reduction of the amount, namely, that he does not intend to provide anything for research in the disposal of sewage or industrial wastes, which should be undertaken by one of the administrative agencies of the State, is explanatory, but that it does not have the binding force of law.

ANALYSIS

Under the Constitution of California, as under the constitutions of other states, the legislative power of the State is vested in the Senate and Assembly (subject to the reserved powers of the people in respect to initiative and referendum) (Art IV, Sec 1, 1st sentence), and the Governor has only those powers in respect to legislation which are expressly enumerated in the Constitution (*Lukens* v *Nye* (1909), 156 Cal. 498, 501) The constitutional provisions applicable to the instant question appear to be parts of Sections 16 and 34 of Article IV.

Section 34 includes the provision.

"In any appropriation bill passed by the Legislature, the Governor may reduce or eliminate any one or more items of appropriation of money while approving other portions of the bill, whereupon the effect of such action and the further procedure shall be as provided in Section 16 of this article "

Section 16 provides

"Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it, but if not, he shall return it, with his objections, to the house in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it If after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each house voting therefor, it shall become a law, notwithstanding the Governor's objections If any bill shall not be returned within 10 days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within 30 days

after such adjournment (Sundays excepted), shall sign and deposit the same in the Office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. *If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriations so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided.* If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor." (Emphasis added.)

These provisions may be readily distinguished from provisions empowering the Governor to eliminate items or sections in appropriation bills, which have been held not to authorize him to reduce the amounts appropriated (*Fergus v. Russell* (1915), 270 Ill. 304, 110 N.E. 130, *Lukens v. Nye* (1909), 156 Cal. 498, 507 (considering Sec. 16 and Sec. 34 prior to the amendment of 1922), Annotations, Disapproval by Governor of a bill in part or approval with modifications, 35 A.L.R. 600, 606, 99 A.L.R. 1277, 1279) on the one hand, and, on the other hand, from such provisions as that of Wisconsin, which provides that "appropriation bills may be approved in whole or in part by the Governor, and the part approved shall become law, and the part objected to shall be returned in the same manner as provided for other bills" (*State ex rel. Wisconsin Telephone Co. v. Henry* (1935), 260 N.W. 486, 99 A.L.R. 1267, 1272) under which the Governor's disapproval of a legislative declaration of intention and provisions creating an agency for the administration of unemployment relief in an act to raise revenues for emergency relief purposes, imposing an income tax, and appropriating the receipts, was sustained as an authorized disapproval of separable provisions. The California authorization is to "reduce or eliminate any one or more items of appropriation of money" in an appropriation bill "while approving other portions of the bill."

What is an "item of appropriation" subject to reduction or elimination by the Governor? In California, the budget bill of 1923 included items of appropriation for salaries and support of the several state colleges and special schools. It also included a provision that not more than 1/24 of the amount appropriated under the act for each department or institution for support and salaries for the biennial period should be expended during any one month without the consent of the state board of control, and that not more than one-half of the appropriation should be expended in any one year unless expressly authorized in the act. To these provisions there was attached a proviso that "the state controller shall at the request of the state director of education set over and transfer from the appropriations for salaries and support for the several teachers' colleges and special schools an amount not exceeding one percent of such appropriations and the amount so transferred shall be designated as the administrative allotment of the state department of education and shall be available for use by the director of education for the payment of the salaries and support of the general administrative office of the division of normal and special schools during the seventy-fifth and seventy-sixth fiscal years." This proviso was held to be an item of appropriation subject to elimination by the Governor (*Wood v. Riley* (1923), 192 Cal. 293).

So, also, where the budget bill made an appropriation of $1,625,185 for the support of the Department of Industrial Relations, of which $328,000 was to be used for additional safety inspectors and $20,000 for the salaries of agents in the Division of Industrial Welfare and for no other purposes, it was held that the specific items of $328,000 and $20,000 were items of appropriation subject to the veto power of the Governor and further, that the elimination of those items did not affect the general appropriation of $1,625,185 so as to reduce it below $1,397,185 to which the Governor expressly reduced it (an amount more than the original $1,625,125 minus the eliminated items) (*Reardon v. Riley* (1938), 10 Cal. 2d 531, 535).

Likewise, where the budget bill provided "Item 35—For support of the Railroad Commission of the State of California, eight hundred fifty seven thousand six hundred one dollars, [of which the amount of thirty-four thousand one hundred sixty dollars shall be expended for the support of the Safety Section of the Railroad Commission of the State of California]..... $857,601.00" (Brackets added), and the Governor eliminated the bracketed material without reducing the amount of $857,601, it was held that the action of the Governor eliminated the specific item of $34,160, but did not affect the general appropriation of $857,601 (*Railroad Commission v. Riley* (1938), 12 Cal. 2d 48, 53).

Similarly where the budget bill of 1937 provided an appropriation of $48,000,000 for unemployment relief, followed by provisions that of that $48,000,000 certain amounts should be expended for additions and repairs to various state institutions, colleges, schools and other state agencies totaling the sum of $7,266,550, and the Governor vetoed the portions of the bill designating those amounts for those specific purposes, indicating that the appropriation of $48,000,000 was not thereby reduced, and the state controller contended that nevertheless, the amount of $48,000,000 was reduced by the aggregate of the eliminated specific appropriations, it was held that the $48,000,000 appropriation was not reduced by the elimination of the specific included items (*Pomeroy v. Riley* (1938), 12 Cal. 2d 166).

However, an item of appropriation is to be distinguished from a condition or restriction which ordinarily is not subject to veto (42 Am. Jur. 753, Sec. 51). Thus, in *Commonwealth v. Dodson* (1940), 176 Va. 281, 11 S.E. 2d 120, under a constitutional provision that "the Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object," various purported vetoes by the Governor were held unauthorized, as directed to provisions or conditions of the act and not to items of appropriation. The provisions attempted to be vetoed included one that no part of any appropria-

tion for the State Planning Board was to be used for investigation of county government, held to be a condition, and not an item, one that no part of money appropriated to the Commission of Fisheries was to be used for maintenance or operation of a designated boat, likewise held not to be an item, one providing that all attorneys authorized by the act to be employed by any state department or agency, and all attorneys compensated out of any moneys appropriated by that session of the General Assembly, should be appointed by the Attorney General and subject in all respects to the provisions of a specified code section, held unauthorized, and one excepting the judicial and legislative departments from a provision of the act giving the Governor the power to require information from heads of departments and agencies, likewise held not an item. The court said (11 S E 2d 127)

> "We think it is plain that the veto power does not carry with it power to strike out conditions or restrictions. That would be legislation. An item in an appropriation bill is an indivisible sum of money dedicated to a stated purpose. It is something different from a provision or condition, and where conditions are attached, they must be observed where none are attached, none may be added."

In the Dodson case the court cited *Boaz on v Secretary of Justice* (1936) 299 U S 410, 57 S Ct 252, 81 L Ed 312, in which the Supreme Court of the United States considered the veto power of the Governor General of the Philippines under the Organic Act, which provided

> "The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object."

The legislature had sent to him the Retirement Gratuity Law

> "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act numbered Thirty-eight Hundred and Ninety-nine, and for other purposes."

This act accomplished the purpose indicated by its title in 12 sections, of which Section 7 provided,

> "The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act numbered Thirty-eight Hundred and Ninety-nine shall also be entitled to the gratuities provided for in this Act."

and Section 10 provided

> "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated."

The Governor General approved the act with the exception of Section 7 and the validity of the veto of Section 7 was before the court.

The court held that the Governor General was without power to separately veto Section 7. It indicated that the question to be decided was whether the bill constituted an appropriation bill, and, if so, whether section 7 was an item of the bill within the meaning of the quoted provision of the Organic Act, and concluded, first, that the bill was not an appropriation bill, but an act of general legislation including an appropriation, and second, that even if it were, Section 7 did not constitute an item of appropriation.

The reasons given by the court are particularly cogent to the problem of the effect of the action of the Governor of California upon Chapter 1575 of the Statutes of 1949. With reference to the attempted veto of Section 7, the court said (299 U S 410 at p 414)

> "No more than any of the designated sections, does Sec. 7 constitute an item of appropriation. All of them are distinct parts of an act of general legislation. The elimination of any by an exercise of the veto power, with the going into effect of the remaining portions of the bill as a consequence (if the veto be not overruled by a two-thirds vote of each house), would result in the enactment of a general law in an emasculated form not intended by the legislature and against the will, perhaps, of a majority of each house. This would not be negation of an item or items of appropriation by veto but, in effect, affirmative legislation by executive edict.
>
> "So, even if it be conceded that the bill could be characterized as an appropriation bill, Sec. 7 is not an 'item' within the meaning of Sec. 19 of the Organic Act. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some general provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called 'log-rolling'—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation unnecessary or even indefensible items are sometimes included."

When we consider Chapter 1575 (A B 2033) with specific reference to the applicable constitutional provisions, as construed by the California cases, and in the light of the out-of-state cases construing more or less comparable provisions, it appears that the Legislature sent to the Governor a bill containing a single item of appropriation of $100,000 to be expended by the Regents of the University of California for research relating to the technical problems of disposal of sewage, garbage and industrial waste, and the dissemination of such research information to interested persons; that the Governor, pursuant to Section 34 of Article IV reduced the amount of that item of appropriation to $50,000, stating as his reasons therefor (as required by Section 16 of Article IV), his '*intention*' to provide the entire amount for research in the disposal of garbage, and to provide nothing for research in the disposal of sewage and industrial wastes, because he deems such research proper to be undertaken by one of the

administrative agencies of the State All this appears to be authorized and directed by Sections 34 and 16.

But there is nothing in either section which purports to give the Governor's statement of his reasons the binding force of law, nor was there any more specific item of appropriation in Assembly Bill No. 2033 which the Governor could eliminate than the lump amount of $100,000 which he reduced to $50,000

Although in his statement the Governor stated his intention to provide the entire sum for research in the disposal of garbage and that he did not intend to provide anything for research in the disposal of sewage and industrial waste, he did not purport to strike from the bill the references to disposal of sewage and industrial waste or to rephrase the bill so as to limit the research authorized to problems of the disposal of garbage. Under the Dodson case to have done so would have been to legislate or, as suggested by the court in the Bengzon case, to enact a law different from that enacted by the Legislature It does not appear that the Governor did, or attempted to do, anything more than reduce the amount of the appropriation from $100,000 to $50,000, stating his reasons therefor.

Very truly yours,

FRED B WOOD
Legislative Counsel

By HARRIETT R. BUHLER
Deputy