

June 22, 1999

OPINION NO. 99-4

Mr. Al Konishi
County Clerk
25 Aupuni Street
Hilo, HI 96720

Dear Mr. Konishi:

Re: Action By Mayor on Bill 45, Draft 4, Operating Budget for 1999-2000

This is in response to the questions directed to this office by the County Clerk concerning the power of the Mayor to exercise the line-item veto pursuant to the County Charter. Your letter of June 17, 1999 notes that the Mayor's message of June 11, 1999 stated that he had reviewed the approved operating budget and returned it to the council with vetoes to "certain actions" and "restoring funding" for some programs. The questions point to two sections of the Charter: §10-5, which states in relevant part:

If the Mayor disapproves of the bill adopting the operating budget or any part thereof, the mayor shall return the bill or the portions vetoed with a written statement of objections to the clerk for further council action within ten calendar days of receipt of the bill.

and §3-12, which states in relevant part:

If any appropriation bill is presented to the mayor, the mayor may veto any item or portion thereof by striking out or reducing the same.

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The County Clerk then raises two issues:

1. Does the County Charter authorize the Mayor to “restore” proposed funding by purporting to veto “certain actions”?
2. Is the Mayor’s “line-item veto” power restricted to “striking out” or “reducing” appropriations ?

The answer to the first question is “no;” the answer to the second is “yes.”

While there are no cases on point within the State of Hawaii, other jurisdictions have considered the issues and have concluded that where a charter or constitutional provision allows a chief executive to exercise a line-item veto, that power is limited to eliminating or reducing an appropriation or portion of an appropriation. *Opinion of the Justices to the Senate*, 419 Mass. 1201, 643 N.E.2d 1036 (1994) is instructive. There, the state senate asked the state Supreme Judicial Court for an opinion about the powers of the governor. The constitutional provision in question, Article 63, Section 5 of the Massachusetts Constitution, was very similar to the provision regarding the mayor’s power in the County Charter, stating:

The governor may disapprove or reduce items or part or items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be same as in the case of a bill disapproved as a whole.

In that case, the governor had reviewed the state’s budget for the 1995 fiscal year, which included an appropriation of approximately \$61,000,000 for the administration and operation of the State Lottery Commission. The governor returned the bill after lining out a portion of the bill which required that none of the appropriated money could be used to advertise the lottery and that no more than \$250,000 of the appropriated money could be used for upgrading the agency’s computer system. The Supreme Judicial Court ruled that this action by the governor was beyond his constitutional powers. The Court noted that the portions “vetoed” by the governor did not appropriate funds, but instead directed the way the funds were to be used, and stated:

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The removal of these restrictions would enlarge the amount of the funds appropriated for advertising the lottery and for upgrading computers. *The governor's veto power is limited to disapproval or reduction of appropriated monies; it does not extend to enlarging the purpose for which appropriations may be expended.* [Emphasis supplied.]

643 N.E.2d at 1040. In the present case, this would mean that the mayor may reduce or remove appropriations or parts of appropriations from the budget, but may not restore or add appropriations.

The reasoning behind such a conclusion appears to be the concept of the separation of powers within the government. This reasoning may be seen in *Rios v. Symington*, 172 Ariz. 3, 833 P.2d 20 (1992), where the state legislature challenged the actions of the governor in line-item vetoing a number of appropriations and issuing orders to several state agencies that they "revert" monies affected by the vetoes to the general fund. While the state supreme court held that the vetoes were valid, the governor's constitutional authority did not allow him to order how the money was to be otherwise used. The court noted:

...[T]he Governor has attempted to substitute his own spending priorities for the Legislature's by vetoing a legislative reduction, impounding a lesser amount, and then directing that the balance be spent on programs the governor considers necessary

833 P.2d at 30.

In both *Rios, supra* and *Opinion of the Justices, supra*, the courts held that where such a line-item veto is invalid, then the action is of no effect and the item remains as it was prior to the attempted veto. 833 P.2d at 30; 643 N.E.2d at 1040.

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To summarize, the disapproval of any item which is either reduced or eliminated is valid, and the insertion of any sum less than the original amount is within the executive power. *Citizens Utility Board vs. Klauser*, 534 N.W.2d 608 (Wis. 1995). Any attempt to increase an appropriation is an infringement of legislative prerogative.

Sincerely,

RICHARD D. WURDEMAN
Corporation Counsel

By _____
Frederick Giannini
Deputy Corporation Counsel

APPROVED:

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Corporation Counsel

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