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Act No. 1401, House No. 2473 returned unsigned

Strom Thurmond

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STATE OF SOUTH CAROLINA
EXECUTIVE CHAMBERS
COLUMBIA

MR. SPEAKER AND GENTLEMEN OF THE HOUSE OF REPRESENTATIVES:

I herewith return to your honorable body without my signature Act No. 1401, House No. 2473, entitled "An Act to provide for the Levy of Taxes for York County for the Fiscal Year Beginning July 1, 1950, and Ending June 30, 1951, for School, County and Other Purposes; and to Direct the Expenditure Thereof, and to Prescribe Powers, Duties and Authorities of Various County Officials of Said County."

This is the York County Supply Bill for the Fiscal Year 1950 to 1951, a local enactment.

As Governor, I have received a petition bearing the signatures of 3,000 citizens of York County asking that this measure be vetoed. I have also received a written request to the same effect from 9 of the 12 candidates for the House of Representatives for York County in the current primary.

Our Supreme Court has held that the veto power given to the Governor by Article IV, Section 23, of the State Constitution is a legislative function, rather than an executive function. Doran v. Robertson, 203 S. C. 434, 27 S. E. 2d 714. It is a part of the legislative process in the enactment of legislation. A bill has not been enacted until the procedure of approval or veto by the Governor has been completed in the manner provided by the Constitution. By express provision of the section of the Constitution which I have mentioned, the Governor may veto separate items or
sections in the State Appropriation Bill, and not the whole 
bill, but in the case of County Supply Bills or other 
measures the Governor must either sign or veto the whole bill.

Until 1947, the veto of a County Supply Bill after 
the adjournment of the General Assembly was made virtually 
impossible as a practical matter, whatever it might contain, 
because the county would then have been left without any 
provision for its operation and the levy of taxes therefor. 
However, by Act No. 76 of the Acts of 1947, the General 
Assembly provided:

"That in the event no supply bill is enacted to 
provide for the County government of any county of the State 
then, and in that event, the appropriation, terms and 
conditions contained in the last enacted supply bill of 
such County shall be continued for an additional year;
PROVIDED, That only usual appropriations and no special 
appropriations for unusual purposes, if contained in such 
bill, shall be held as appropriated by the continuance of 
such bill."

Under this law, the Governor in the exercise of 
the legislative function of the veto power is enabled to 
protect the people of a county against violations of the 
Constitution, and at the same time not substantially affect 
the ability of the county government to operate.

In 1948 the Supreme Court of this State decided 
the case of Scroggie v. Bates, 213 S. C. 141, 48 S. E. 2d 
634, in which it was held that appropriation in the State 
Appropriation Bill for 1947 of an amount of money for 
"official expenses" to the members of the General Assembly 
for work done in the session and between sessions was extra 
pay, and therefore unconstitutional.
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Following this decision there appeared in the
York County Supply Bill passed for 1949-1950 the following
provision as Item 21 of Section 1 thereof:

"Item 21. Expenses York County Legislative
Delegation and Senator              6,000.00

"Total Item 21

PROVIDED, that it shall be the duty of the York
County Legislative Delegation and the York County
Senator while not in attendance at the General
Assembly in Columbia, South Carolina, to enquire
and investigate into all phases of the operation
of the department of government of York County and
the needs of its people in order that said delegation
might ascertain such changes as needed to bring about
a more economical and efficient administration of the
affairs of York County and the needs of its people.
PROVIDED, FURTHER, that it shall be the duty of the
York County Legislative Delegation and the York County
Senator to meet not less than twice monthly at the
York County Courthouse to transact such business as
shall come before it.
PROVIDED, FURTHER, that it is the declared intention
of the General Assembly of South Carolina that these
duties be, and are, beyond that now required by law
of the Constitution of this State.
PROVIDED, that the sum appropriated in this item
shall be used to reimburse members of the York County
Legislative Delegation and the York County Senator
for actual and/or official expenses in carrying out
the above provisions.
PROVIDED, that should any court of competent jurisdic-
tion declare any part of the above provisions in conflict
with the Constitution, such declaration shall not make
invalid the remainder."

I considered vetoing the bill then, because I
believed this provision to be unconstitutional, but I was
informed that the question would be challenged in court,
and I signed the bill with reluctance so that the Court test
could be had.

This same identical provision has again been
written in the York County Supply Bill for 1950-1951, as
Item 19 of Section 1 thereof, and after careful consideration
have concluded that I should not again sign a bill containing
this provision.
It seems clear to me that if the Legislature cannot constitutionally vote its members extra compensation, by whatever name it may be called, out of the State treasury, as was held by the Supreme Court, the Legislature cannot constitutionally vote the members from a county such compensation out of their county's treasury. The York County Senators and Representatives, as members of the General Assembly, are officers of the State government, and are not county officers.

If the bill in question is regarded as attempting to compensate them or pay expenses out of the county treasury for performing a State function in investigating for the General Assembly the York County government, this would violate Article X, Section 6, of the State Constitution, since such an expenditure would be for a State purpose, and not for an ordinary county purpose.

If, on the other hand, the bill in question is regarded as attempting to compensate them or pay expenses out of the county treasury on the theory that they will perform a county administrative function in investigating the York County government, this would violate Article 1, Section 14, of the State Constitution, under the principle laid down in the case of Bramlett v. Stringer, 136 S. C. 134, 195 S. E. 257, which held that members of the General Assembly, the legislative branch of the State government, could not constitutionally be authorized to perform county executive or administrative functions.

Another objectionable provision in the bill under consideration is Section 15-A, which reads:

"Provided, that in the event the Board of Directors for York County, as provided for in Ratification No. 1242 (3-628) as approved by the Governor on June 3, 1950, are not named in the primary elections and have not been appointed
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and commissioned on or before January 30, 1951, then in
that event the Directors shall be appointed as follows:
One appointed from each Magisterial District in York County
and commissioned by the Governor upon the recommendation
and consent of the Senate."

Under this section, the county governing board
would be named by the Senate, and the original purpose of
the act approved June 3, 1950, referred to in that section,
which was that the people would have a voice in naming their
county's governing board, will be frustrated. This provision
is anything but a step toward home rule in the county, in
delegating the naming of its governing board to the Governor
and the Senate. The Legislature will have full opportunity
to deal with the question of constituting the governing
board prior to January 30, 1951, since it convenes earlier
than that date next January.

Respectfully submitted,

J. Strom Thurmond
Governor

JST:WS
July 6, 1950