THE VETO POWERS OF THE GOVERNORS OF OKLAHOMA WITH SPECIAL REFERENCE TO GOVERNOR LEON C. PHILLIPS

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PREFACE

The veto power of the American state governor has for many years been neglected by students of political science. While this study is limited in its scope, it is an attempt to ascertain the extent of its use by Oklahoma Governors in the years since statehood. In addition to merely a count of the number of times the veto has been invoked, an attempt has been made to also discover the types of vetoes used, the reasons given by Governors for invocation of the vetoes, and the procedures most commonly used by Governors in the consideration of measures sent to their office by the Legislature for gubernatorial approval or rejection.

Many persons have aided me greatly in the preparation of this study. In particular I wish to express my gratitude to Mr. Powers of the State Law Library, to the Honorable Wilburn Cartwright, Secretary of State, to Herbert Brannon, advisor to Governor Phillips, to State Senators James C. Nance and H. V. Posey, Representative L. B. Peak, and Governors Henry S. Johnston, William H. Murray, Leon C. Phillips, and Roy J. Turner, all of whom graciously gave of their time in aiding me in my quest for information.

I wish also to express my appreciation to Dr. Foster Dowell who started me on this task, to Dr. Robert E. Powers for his helpful criticisms given during the preparation of the materials, and to Dr. Glenn Hawkins for his encouragement.

Harold John

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CHAPTER I

HISTORY OF THE VETO POWER

A. INTRODUCTION

The purpose of this study is to determine the extent of the use of the veto power by Oklahoma Governors and, in particular, to what extent Governor Phillips used the "threat of veto" to secure legislation that he desired.

No attempt has been made of a study of bills vetoed during the time Oklahoma was a territory. Neither does it include the eastern part of Oklahoma which was called Indian Territory, composed of the Five Civilized Tribes. It was thought wise to limit this study to the period of statehood.

The system of checks and balances has played a very important part in preserving the United States as a democratic republic. Without the existence of either of the elements of the checks and balances, the democratic government of the United States would not be so successful. Within the framework of the Oklahoma Constitution we find a similar pattern. The powers of the state government are divided among the legislative, executive and judicial branches of our government. The duties, the rights and privileges of the governor could expand into a dictatorship were it not for the restraining power of the legislative and judicial branches of government. The legislative power could be used to establish an oligarchy which would destroy the executive or make him nothing more

than a figurehead. Either branch which secured control of the revenue could become destructive of the other branches of government without the restraint of the other.

The judicial power, as delegated by the constitution, is used to interpret the constitution and the laws. When a law is enacted, its constitutionality may be determined in due course of time It is very important that the judicial branch of our government shall have power to subordinate all laws with the constitution. When such subordination is used for and within the purpose intended, it not only acts as a preserving power but an agency of blessing to the state and to the citizens.

It becomes the duty of the chief executive to examine, survey, and study all bills, not only as to their constitutionality, but with an eye fixed on their beneficial, painful, or even undesirable effect in relation to the rules, regulations and policy which the executive authority is bound to administer. With every session of the legislature, the legislative arm of the state government can create new offices, abolish old ones, transfer duties from one board to another, modify city charters, set up highway machinery, create educational institutions, modify and change criminal statutes, take over financing of eleemosynary and charitable activities, post statutes affecting public service corporations, in fact legislate on any subject not prohibited by the constitution. Without the veto power, a legislative oligarchy could create institutions, boards and commissions, elect or appoint officers or place the same in the hand of individuals of their own choice, take charge of the budget and the spending of public funds on a basis of favoritism, and raise or

lower taxes, irrespective of administrative welfare or the welfare of the people. Thus we see that under the system of check and balances, each of the three branches of state government can act as a brake on the other two.

B. EVOLUTION OF THE VETO POWER

1. Early Origin

The word "veto" is of Latin extraction, and, literally translated, reads: "I forbid," or "I deny."[1] There are two fundamental theories upon which the grant of the power to veto rests. First, to preserve the integrity of that branch of government in which the vetoing power is vested, and thus to maintain an equilibrium of governmental powers. Second, to act as a check upon corrupt, hasty, or ill-considered legislation.[2] Rome vested this power in the tribunes, and the salutation "I forbid," pronounced by a tribune, stationed at the door of the Roman Senate, nullified it. The Crown, in England, possessed the same power for a long time. French philosophers exhausted their learning and ingenuity upon the constitution of 1791, and saw it fall apart for the reason, among other, that the king possessed the power of suspension of legislation, unless adopted by three successive assemblies. The Spanish King might twice refuse his sanction to the action of the Cortes before it could find a place in the law.

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[1] Carter v. Rathburn, Oklahoma Supreme Court, Oklahoma Reports, (1923), Vol. 85, p. 258.

[2] Ibid.

2. In the United States

The executive veto has had an interesting and varied history in the United States. During the Colonial period in America, the veto power was exercised by all the governors of the royal and proprietary colonies with the exception of Pennsylvania, where the veto was reserved for the Crown. George III had refused assent to certain laws of the Colonial assemblies, and the power was, therefore, feared.[3] Interestingly enough, the excessive use of the veto power by the Crown was the first grievance mentioned in the Declaration of Independence.[4]

When the states wrote their own constitutions, following the break with England, they generally reflected the attitude toward the veto which was expressed in the Declaration of Independence. Nine of the twelve new constitutions made no provisions for executive veto, and in another state, South Carolina, the veto provision included in its first constitution was repealed two years after its adoption.[5] The State of Massachusetts was the only state to give the Governor the veto power and allow him to keep it. In general, legislative supremacy was the key note of these early constitutions.[6] "A story is told of this early period that, when William Hooper went home from the North Carolina Convention and was

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[3] Leslie Lipson, The American Governor from Figurehead to Leader, (The University of Chicago Press, Chicago, Ill., 1939) p. 17.

[4] Ibid.

[5] Illinois Legislative Council, The Veto Power in Illinois, Publication 56 (Springfield, 1943), p. 1.

[6] Lipson, op. cit., p. 14.

asked how much power they had given the Governor, he answered: 'Just enough to sign the receipt for his salary.'"[7]

When the constitution of the federal union became effective in 1789, it provided for an executive veto. A few states did take such action immediately after the acceptance of the national constitution, but in the period from 1793 to 1812, no state, old or new, adopted the veto.[8] From 1812 to the present, every new state, except one, has, on its admission to the union, provided for a veto.[9] And, since the Civil War, all states not having the veto, except North Carolina, have altered their constitutions to provide for executive review of legislation.[10]

Following the Civil War, a new idea relating to the veto power originated. This was what is known as the "item veto". This was used by the Confederacy during the Civil War and later adopted by certain southern states. Thirty-nine states have the item veto, all but five adopting it before 1913.[11] Two states vary the usual provision authorizing vetoes of items in appropriation bills by allowing the Governor to veto sections or provisions other than appropriations.[12] While in some states the courts have refused to sanction the practice, the Governor of Pennsylvania has power to reduce individual items.[13] This has occurred

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[7] Ibid.

[8] Illinois Legislative Council, loc. cit.

[9] Ibid.

[10] Ibid.

[11] Ibid., p. 3.

[12] Ibid.

twice in Oklahoma, resulting in the court cases of Regents of State University v. Trapp[14] and Peebly v. Childers.[15]

3. In Oklahoma

On May 2, 1890, Congress passed what is known as the Organic Act. This act organized a small part of what is now Oklahoma into a territory and called it the Oklahoma Territory. Section 6 of this bill is as follows:

> Every bill which shall have passed the Council and the house of representative of said territory shall, before it becomes a law, be presented to the Governor of the territory. If he approved he shall sign it, but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon their journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house it shall become a law. But in all such cases the vote of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.[16]

From 1890 to 1907 the chief executive of the Oklahoma Territory had the above veto power. He did not have the power of the item veto.

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[13] W. Brooke Graves, American State Government, (D. C. Health and Company, Boston, 1945), p. 390.

[14] Regents of State University v. Trapp, Oklahoma Supreme Court, Oklahoma Reports, (1911), Vol. 28, p. 83.

[15] Peebly v. Childers, Oklahoma Supreme Court, Oklahoma Reports, (1924), Vol. 95, p. 40.

[16] U.S. Congress, U.S. Statutes at Large, Organic Act, 51st. Congress, 1st. Session, 1889-90 (Government Printing Office, Washington, D. C., 1890) Sect. 6, p. 84.

On November 20, 1906, one of the most important groups of delegates in the history of the state gathered at Guthrie, Oklahoma, to write a constitution so that when it was ratified, it would enable the territory of Oklahoma to take her place among her sister states as the forty-sixth state in the union. While there were many questions that came up during the course of the convention, attention will be paid only that which is related to the subject of the veto power of the Governor.

President Murray appointed several committees which were to draw up reports that were to be voted upon by the delegates at the convention. For the Committee on the Executive Department he named the following: Chairman, Mr. Johnston, Mr. Parker, Mr. Hill, Mr. Edmondson, Mr. Turner, Mr. Mathis, Mr. Harrison of 88, Mr. Maxey, Mr. Edley, Mr. Carr, Mr. Banks, Mr. Quarles, Mr. Harrison of 45, Mr. Helton and Mr. Sater. This committee did not all meet in a formal meeting.[17]

On December 4, 1906, Mr. Ramsey, who was not a member of the Committee on Executive Department, introduced Proposition no. 144. This proposition was to give the Governor the power to veto items in appropriation bills. It was referred to the Committee on Executive Department.

The committee lost the services of their chairman when Mr. Johnston became ill with smallpox. On January 24, 1907, Mr. Gabe Parker was appointed chairman pro-tempore of the Committee on the Executive Department.[18] On January 26, 1907, Mr. Maxey, acting for Mr. Parker, who was

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[17] This information obtained by author in a personal interview with Henry S. Johnston of Perry, Oklahoma, June 25, 1949.

[18] Proceedings of the Constitutional Convention of the Proposed State of Oklahoma, (Muskogee, Oklahoma., Muskogee Ptg. Co.), p. 152.

away on business, filed report no. 31, which was read, referred to the committee, and ordered printed.[19] Committee report no. 31 was similar to sections 11 and 12 of article 6 of the Oklahoma constitution in some ways but there were two major differences. They were as follows:

> If any bill or resolution shall not be returned by the Governor within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislation, unless approved by the Governor within thirty days after such adjournment.

Article 6 of the Oklahoma constitution was written by two men.[20] They were Henry S. Johnston, chairman of the committee and A. Duff Tillery, a lawyer and close friend of Johnston. Johnston selected Tillery because of his ability to express himself clearly so that there would be no doubt as to the meaning or intent of the constitution.

In writing sections 11 and 12 of article 6 of the constitution, the state constitutions of New York and West Virginia were followed.[21] While the committee made a study of the constitutions of all the states and even of some foreign countries, these two state constitutions more closely approximated what these two men wanted. Mr. Tillery did as much, if not more, of the research than Mr. Johnston.

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[19] Ibid.

[20] Personal Interview, op. cit.

[21] Ibid.

Section 12 in regard to appropriation bills seems to have been taken from the Constitutions of New York (1894), art. 4, section 9, and West Virginia (1872) 7, 15, but it was more like that of West Virginia.[22] Section 11 was patterned after New York (1894) art. 4, section 9, and Kentucky (1890) section 88 and 89. New York does not provide for resolutions to be approved by the Governor, but Kentucky section 89, Nebraska (1875) article 5, section 15, and Georgia (1877) art. 5, section 1, paragraph 17 did.[23] A limitation of five days for a Governor to sign or veto a bill was taken from the West Virginia constitution.

When Mr. Johnston and Mr. Tillery finished writing Committee Report no. 66, Mr. Johnston gave it to Mr. Tillery to pass on to Mr. Parker. Mr. Parker was absent, so it was given to Mr. Maxey. On Friday, March 8, 1907, Mr. Maxey, in the absence of chairman and vice-chairman, filed report no. 66 on the Executive Department. It was referred to the committee of the whole and ordered printed.

A careful reading of the proceedings of the constitutional conventions shows that there were no debates in regard to the veto power. Mr. Johnston says, "While I was not present at the time of the adoption of the report, I was told that it went through without a single change".[24] Section 11 of article 5 of the Oklahoma constitution is as follows:

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[22] Robert L. Williams, The Constitution and Enabling Act, (Pipes-Reed Book Co., Kansas City, Mo., 1912), p. 65.

[23] Ibid., p. 66.

[24] Personal Interview, op. cit.

> Every bill which shall have passed the Senate and House of Representatives, and every resolution requiring the assent of both branches of the Legislature, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large in the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that House shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and, if approved by two-thirds of the members elected to that House, it shall become a law, notwithstanding the objections of the Governor. In all such cases, the vote in both Houses shall be determined by yeas and nays and the names of the members voting shall be entered upon the journal of each House respectively. If any bill or resolution shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within fifteen days after adjournment.[25]

The power which gives the Governor the authority to veto items in appropriation bills is found in sec. 12 of art. 5 of the Oklahoma Constitution which reads as follows:

> Every bill passed by the Legislature, making appropriations of money embracing distinct items, shall, before it becomes a law be presented to the Governor; if he disapproves the bill, or any item, or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill shall have originated, but all items not disapproved shall have the force and effect of law according to the original provisions of the bill. Any item or items so disapproved shall be void, unless repassed by a two-thirds vote, according to the rules and limitations prescribed in the preceding section in reference to other bills: Provided, that this section shall not relieve emergency bills of the requirement of the three-fourths vote.[26]

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25 "Oklahoma Constitution, Art. VI, Sec. 11, Oklahoma Statutes," (1941), p. 59.

26 Ibid.

The only difference in the committee report no. 66 and the constitution in regard to the veto power of the Governor is found in the section number. In the constitution the veto power of the Governor is found in sections 11 and 12. In committee report no. 66 it is found in sections 12 and 13. Sections 11 and 12 of the constitution are identical, word for word, with sections 12 and 13 of committee report no. 66. Since committee report no. 66 was adopted and became a part of the constitution, it has not been changed.

There has been only one attempt to do away with the veto power of the Governor since Oklahoma became a state. During the regular session of the fifth session of the legislature, Senator Wilson of Dewey introduced Senate joint resolution no. 3. This joint resolution authorized the submission of a proposed amendment to the constitution revoking the veto power. The resolution got to the second reading after which no further action was taken.[27]

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27 Transcripts of Proceedings of the Senate, Fifth Legislature, Regular Session, (Oklahoma City, Oklahoma. Warden Company) p. 80.

CHAPTER II

LEGAL ASPECTS OF THE VETO POWER

A. Supreme Court Decisions

The authority of the chief executive of the State of Oklahoma to approve or disapprove bills or joint resolutions is very clear. The Oklahoma constitution makes this so. However, the methods and procedures used by various Governors in carrying out such authority has resulted in several cases being tried by the Oklahoma Supreme Court.

The first supreme court case in regard to the veto power of the Governor occurred in 1911 in the case of Regents of the State University v. Trapp.[1] While all the Justices concurred in this decision, it certainly was a debatable question.

The Regents of the State University, located at Norman, filed a writ of mandamus against M. E. Trapp, State Auditor, to compel him to issue to the Treasury of the Board of Regents, a warrant on the State Treasurer for the sum of $2,235.70 to pay claims that had been allowed by the Board of Regents. The State Auditor refused to do this for the reason that there were not sufficient funds appropriated to pay the claims. Whether the money was available to pay the claims in question depended upon whether the Governor had approved or disapproved in part Senate Bill 268 of the second legislature. Section 1 of this bill was as follows:

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[1] Regents of State University v. Trapp, Oklahoma Supreme Court, Oklahoma Reports, loc. cit.

> There is hereby appropriated out of the state treasury the sum of two hundred eighty-five thousand, eight hundred ten and twenty-three hundreths dollars, or so much thereof as may be necessary, for the support and maintenance of the State University at Norman for the biennial period, beginning July 1, 1909, and ending June 30, 1911; and for other and miscellaneous purposes, and the State Auditor shall draw warrants upon the State Treasurer for such portion thereof as may be found to be due upon auditing the respective claims in favor of the person or persons to whom such claims are allowed, provided, that all claims and accounts against the state shall be sworn to as true and correct accounts before being audited.[2]

Section two of the bill told how the money in section one was to be apportioned. Fifteen items in section two were reduced in amount for each of the two years, but not vetoed. Just below the signature of the Governor was the following notation made by him:

> Less the following amounts:
>
Special levies appropriated in S.B. 358	$14,219.32	
Sec. 13 money appropriated by H.B. 336	43,363.50	57,682.82
	$57,682.82	285,810.23 [3]

The above quotation seems to have made the actual amount of the appropriation questionable. It was the contention of the plaintiffs that section 2 of this act appropriated $343.493.05 to pay the expenses of the state university for the years 1909-1910 and 1910-1911 but if they were in error in this, there was appropriated $285,810.23 for the same purpose. In either case there was a sufficient amount of money appropriated, that had not been spent, to pay the amount of the claims. The State Auditor contended that the bill appropriated only $285,810.23 and that $94,800 of this amount was vetoed leaving an appropriation of $191,010.23.

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[2] Ibid., p. 85.

[3] Ibid., p. 87.

When the Governor considered the bill, he was of the opinion that it fell within the provisions of sec. 12, art. 6 pertaining to the item veto, and that he was authorized not only to approve or disapprove any item en toto, but had the power to reduce any item or items to a smaller sum than was approved by the Legislature, and after making such reduction, he could approve the item or items. The Supreme Court did not think it was necessary to decide whether the Governor had a right to approve a part of an item and disapprove the remainder. They decided the case by a different method. They said:

> It will be observed that section 1 appropriated the sum of $285,810.23 for the support and maintenance of the State University for the period mentioned therein. This, in our opinion, is the first and only item of appropriation contained in the act. It appears, however, that the Governor construed the second section as making items of appropriation; and that he has attempted to disapprove in part certain of the items contained therein. But that this section will not bear that construction, we think is perceivable from the first clause of the section, as well as from a consideration of the entire section. The first clause of the second section does not state that an appropriation or appropriations are made, but that 'the appropriation for the State University at Norman shall be apportioned as follows.' The aggregate amount apportioned by said section is $343,494.05, which exceeds the amount appropriated by section 1; but at the close of the second section there occurs the following language, (See footnote number 3, second chapter)... A reference to Senate Bill 358 and House Bill 336 aids us to understand what was intended by section 2 of the act under consideration.[4]

What the legislature was attempting to do in section 2 was not only tell how the $285,810.23 appropriation was to be spent but also how the special levies appropriated in Senate Bill 358 for $14,219.32 and in

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[4] Ibid., p. 88.

sec. 13, money appropriated by House Bill 336 for $43,363.50, was to be spent.

The Supreme Court, in their opinion, filed January 24, 1911, said:

> The bill in the case at bar does not embrace distinct items of appropriation; it embraces a single item, with direction how that item shall be expended, together with directions as to how other items of appropriation made by other acts of the Legislature shall be apportioned and expended. The Governor's power to approve or disapprove same, therefore, is not derived from section 12, art. 6 of the Constitution but from section 11, supra. Under that section, since the bill was presented to the Governor less than five days before the adjournment of the Legislature, approval of the whole bill by him was necessary within fifteen days after its adjournment, in order for it to become a law. This he never did. He attempted to prove the bill in part and disapprove it in part. But, since he was without authority thus to approve the bill, his sanctions of parts of the bill was ineffectual to give those parts the force of a law.... He did not approve the entire bill, but specifically disapproved portions of it.
>
> It follows that the bill never became a law; and that the State Auditor is without authority and under no duty to draw warrants upon the funds purported to be appropriated thereby. The relief sought by the plaintiffs is denied.[5]

From this decision, we conclude that the power of the Governor's item veto does not apply to special appropriation bills that contain only one item. Also, any special appropriation bill that is presented to the Governor less than five days before the Legislature adjourns must be signed by the Governor within fifteen days after adjournment before it becomes a law.

The second case pertaining to the veto power of the Governor was

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[5] Ibid., p. 92-93.

filed March 28, 1922, in the case of Carter v. Rathburn.[6] A study of the history of the case shows that the Legislature of 1917 provided in chapter 260, Session Laws 1917, that the State Examiner should appoint one clerk to act as stenographer. The Legislature in 1919 made provisions for the same law. The eighth Legislature, in extraordinary session in 1921, made provisions for the same office, and appropriated the necessary money in Senate Bill no. 1. The bill passed both houses of the Legislature and was presented to the Governor for approval on the afternoon of the last day of the session. The Governor did not take any action until ten days after the legislature had adjourned. On May 31, 1921, he disapproved the item making an appropriation for the next two years for the stenographic position. There were a few other items vetoed but this was the only one to which the case applied.

In a short time the plaintiff presented her claim to the State Auditor for $125 as salary for the month of July, 1921. The claim was not allowed, and was not audited by the auditor on the grounds that the items of appropriation for her salary having been disapproved by the Governor, and not repassed by the legislature, there was left no valid appropriation for her salary. Both parties agreed that the only question to be determined was whether the appropriation for the two years was a valid appropriation.

According to the Oklahoma Constitution, all appropriation bills containing distinct items, shall, before they become law, be presented

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[6] Carter v Rathburn, Oklahoma Supreme Court, Oklahoma Reports, loc. cit.

to the Governor.[7] If he disapproves the bill or any item, he shall communicate such disapproval, with his reason thereof, to the house in which the bill originated. This was not done in this case. The plaintiff contended that:

> unless the Governor disapproves an item in a general appropriation bill and sends it back for repassage before the Legislature adjourns, the act of disapproval has no effect upon the item and that it becomes a law notwithstanding his disapproval, if he waits until after the Legislature adjourns before indorsing his disapproval thereon.[8]

When the Supreme Court handed down their decisions, they ruled that:

> The disapproval of an item for a clerk's salary, the clerkship in question having been created by a separate act of the legislature, does not have the effect of repealing the law which created such clerkship.
>
> By this we are not to be understood as holding that the Governor has the right to veto a bill of this character after the Legislature has adjourned, but what we do hold is that the appropriation for this clerkship has not become a law as required by the constitution....
>
> Hence, for the sole reason that this appropriation is not made in strict compliance with the law, this court is of the view that it is an invalid appropriation. Not because the Governor has disapproved this item after the adjournment of the Legislature but simply because it has not become a law as required by the provisions of the constitution.[9]

Thus we see that a general appropriation bill with various items must reach the Governor at least 5 days before the legislature adjourns, in order that, if there are any items vetoed, he may send the bill back

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[7] Constitution of State of Oklahoma, sec. 12, art. 6, p. 28.

[8] Carter v Rathburn, op. cit., p. 254.

[9] Ibid., p. 251.

to the house in which it originated, with his reason for veto in order to give the legislature a chance to pass the bill over his veto. This is the only way a single item vetoed by the Governor may become a law.

The next opinion relating to the veto power was filed August 18, 1923, in the case of Peebly v Childers.[10] The facts of this case are as follows. The Legislature passed House Bill no. 485, known as the "Institutional Bill," which provided an appropriation for salaries for the various state colleges and other institutions. In this bill was provided an appropriation for salaries for the state university of $700,000 for the year ending June 30, 1924, and $720,000 for the year ending June 30, 1925. After the final adjournment of the Legislature, the Governor drew a line with red ink through each of these sums and then wrote above these two items the following words: "Approved in the sums of $500,000 only, $500,000 only, J. C. Walton, Governor." After he had reduced salaries for almost all of the colleges of the state, and disapproved other in full, the Governor added this comment to the bottom of the bill.

> Approved, this the ninth day of April, 1923, except as to items stricken and specifically disapproved and except as to the following items; page 2, State University, Norman, salaries $700,000, reduced to $500,000 and $720,000, reduced to $500,000. Signed, J. C. Walton, Governor of the State of Oklahoma.[11]

The court ruled in this case that this was an item veto, therefore,

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[10] Peebly v Childers, Oklahoma Supreme Court, Oklahoma Reports, loc. cit.

[11] Ibid., p. 42.

sec. 12 of art. 6 of the Oklahoma Constitution should apply and not sec. 11, supra. In handing down their opinion, the court said:

> Under section 12, art. 6, Williams Constitution, which applies in the case at bar, no affirmative action on the part of the Governor is necessary to vitalize an appropriation bill embracing distinct items duly passed by the Legislature. But in order to veto any distinct item of an appropriation bill the Governor is required to disapprove the objectionable item en toto.
>
> A fair application of the foregoing fundamental principles to the plain provisions of section 12, art. 6, Williams' Constitution leads to the conclusion that the action of the Governor in attempting to approve in part and disapprove in part distinct items of the Institutional Appropriation Bill was an unauthorized and futile gesture wholly ineffectual for any purpose.[12]

Thus we see that when a Governor vetoes an item or items in a general appropriation bill, he must veto all of the item or none at all. This is the fundamental principle handed down by the court in this case.

The constitution gives the Governor the power to veto bills and joint resolutions. Just what is meant by a joint resolution was handed down March 25, 1924, in the case of Oklahoma News Co. v Ryan.[13] This case originated as a result of the Legislature in 1924 passing a joint resolution extending the time of payment of ad valorem tax. The defendent was of the belief that the resolution was not a joint resolution but a concurrent resolution, because it was not adopted in a joint meeting of both houses but was adopted at a different time in both houses. And, since it was not a joint resolution, it could not repeal, amend, or

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[12] Ibid., p. 41.

[13] Oklahoma News Co. v Ryan, Oklahoma Supreme Court, Oklahoma Reports, (1924), Vol. 101, p. 151.

supersede a regularly enrolled statute of the state. In this decision the Supreme Court ruled:

> If a resolution originating in one house of the Legislature is passed by that house and is then sent to the other for its concurrence, and is passed by it, signed by the presiding officer of each house and approved by the Governor, it is a joint resolution as that term is used in the constitution and the joint rules of the legislature.
>
> A joint resolution which has been duly passed by both branches of the legislature, signed by the presiding officer of each house, and approved by the Governor, may operate to alter or modify an existing law where such alteration is of a temporary character.[14]

In this case, we have clarification of what a joint resolution is and the effect it can have on an existing law.

The next case pertaining to the veto power was that of Ex parte Forrest Benight which was filed on May 7, 1932.[15] In this case the question arose in the following manner. House Bill 23 passed both houses of the Legislature and was signed by the presiding officer of both houses. On March 13, it was sent to the Governor and on March 16, the Governor sent the bill with a communication, to the house suggesting change, but, saying among other things, that he was in favor of the bill. The house made the changes but the Senate did not. A joint conference committee recommended that all records pertaining to the Governor and subsequent action of both houses be expunged. The question arises as to whether the time

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[14] Ibid.

[15] Ex parte Forrest Benight, Oklahoma Supreme Court, Oklahoma Criminal Reports, (1934), Vol. 53, p. 293.

that the two houses spent in discussing the recommendations of the Governor is a part of the five days given to the Governor when the Legislature is in session, or did this time begin when the bill was sent to the Governor the second time. In their decision, the Supreme Court ruled:

> Where a bill is enacted by both branches of the Legislature and is transmitted to the Governor, who does not approve and sign nor disapprove and return with his objections to the house in which it originated, but communicates with the house in which the bill originated, suggesting certain amendments, such communication does not amount to a veto, since a bill may be returned only in the manner provided by the constitution. In such cases, as a matter of law, the bill remains in the possession of the Governor and on the expiration of five days, becomes a law without his signature.[16]

It is clear from the decision that while the two houses are debating the recommendations of the Governor, the time incurred in debating must be included in the five day limit.

About four months later another case relating to the veto power of the Governor was filed. This was the case of Hudson v Carter, filed October 31, 1933.[17] This case was in regards to an appropriation bill in which the legislature had attempted to give to the Governor authority to reduce the amount of an item of an appropriation.

By the provisions of sections 29 and 34, art. 9, of the Constitution, the Corporation Commission is required to ascertain many facts pertaining to the amount of indebtedness, the amount of credit, the salaries of officers and employees, and many other facts relating to roads, transportation

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[16] Ibid., p. 294.

[17] Hudson v Carter, Oklahoma Supreme Court, Oklahoma Reports, (1934), Vol. 167, p. 32

and transmission companies and many others. For this purpose the Corporation Commission is authorized to employ experts to assist the members of the Commission when needed. A provision was placed in the appropriation bill providing that the appropriations for "Public Utilities--Appraisal, Audit, and Litigation" is "to be expended by and with the approval of the Governor."[18]

When the appropriation bill was presented to the Governor, certain items relating to the Corporation Commission were vetoed. In due course of time, action was brought in the court by certain employees of the Corporation Commission of Oklahoma to obtain a writ of mandamus against F. C. Carter, State Auditor of the State of Oklahoma, requiring him to audit and allow several claims for salaries for the month of July, 1933, and to draw and issue them a warrant for the amount provided by law.

Among the several decisions handed down in this case are the following:

> The Corporation Commission, under sec. 29, art. 9, of the constitution, has power and authority to employ all necessary employees to aid it in carrying out the objects therein provided.
>
> The provisions of sec. 29, art. 9 of the constitution which authorizes the Corporation Commission to employ experts to assist them when needed, carries with it the power and authority to fix the amount of the wages to be paid for such employment.
>
> The provision in the general appropriation bill that the appropriation for 'Public Utilities--Appraisal, Audit, and Litigation' is 'to be expended by and with the approval of the governor,' is void for three reasons: first, there is no authority of law for the Governor to approve an expenditure of money appropriated for the purpose of enabling the Corporation Commission to perform the constitutional duties required by the

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[18] Ibid., p. 34.

provisions of sec. 29, art. 9, of the constitution to be performed by it; second, the attempt to authorize the Governor to exercise such power is void under the provisions of sec. 56, art. 5, of the constitution; and third, because the legislature is without authority to confer the power upon the Governor to do indirectly a thing which the Governor could not be empowered to do directly, that is, to reduce an item in an appropriation bill.

Record examined and held, that the appropriation in question is a valid appropriation made by the legislature for the Corporation Commission of an amount for the carrying on of the work required to be done under the provisions of sec. 29, art. 9, of the constitution; that the plaintiffs are employees of the Corporation Commission, serving in employments, which employments and salaries therefor had been provided by law, prior to the enactment of the general appropriation bill; that they served as such during the month of July, 1933, and that they are entitled to the salaries fixed by law for their services.[19]

Thus we see that there are constitutional limitations placed upon the Governor in the item veto.

The next case relating to the veto power of the Governor was the case of McAlester v Oklahoma Tax Commission.[20] The action which caused this case occurred during the fifteenth legislature in 1935, when H. B. 29 passed the legislature and was presented to the Governor on the 24th of April at 7:55 p.m. The Governor neither approved nor disapproved said bill but kept it in his possession until after the legislature adjourned, said sine die adjournment taking place at 12 o'clock noon on April 30, 1935. After adjournment, the Governor sent the bill to the Secretary of State accompanied by the following letter.

I herewith transmit to you enrolled house bill no. 29 which was received by me on April 24, 1935, at 7:55 P.M., and which I retained in my possession five legislative days

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[19] Ibid., p. 33-34.

[20] McAlester v Oklahoma Tax Commission, Oklahoma Supreme Court, Oklahoma Reports, (1935), Vol. 174, p. 322.

prior to the adjournment of the legislature without approval or disapproval.

E. W. Marland, Governor[21]

In determining the five days allowed a Governor to approve or disapprove a bill, the first day does not count.[22] It must be a full calendar day. One Sunday occurred between the day this bill was sent to the Governor and the day on which the legislature adjourned. Computation of the days that the bill was in the hands of the Governor total four and one-half days, and this does not meet the qualifications laid down by the constitution.

The Oklahoma Tax Commission was of the opinion that this bill never became a law for the reason stated above. The petitioners said the act was purely an appropriation measure embracing distinct items, that it was a complete legislative act, and, by sec. 12, the Governor not having disapproved the act, had become effective.[23]

The two main points decided by the Supreme Court in this case were:

> A bill not presented to the Governor and retained by him for 5 days, Sunday excepted, before the adjournment of the legislature, and not affirmatively approved by him within 15 days from the adjournment of the legislature, is not a complete legislative act, and is therefore ineffective.
>
> The term "days", contained in said section of the Constitution, means "calendar days."[24]

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[21] Ibid., p. 33.

[22] State v Sessions, Pacific Reporter, Vol. 115, p. 641.

[23] McAlester v Oklahoma Tax Commission, loc. cit.

[24] Ibid.

In this case we see that the Oklahoma Tax Commission was upheld by the Supreme Court and Governor Marland was in error thinking that five legislative days were the same as five calendar days.

The next case relating to the veto power was filed June 11, 1940, in the case of Crable v Carter.[25] This case was brought about by the Quarterly Budget Law. In the general appropriation bill, $6,400 was set aside for the office of State Superintendent of Public Instruction to be used to pay expenses for travel. In due course of time claims filed by the office of State Superintendent were rejected by the Auditor because they were in excess of the amount allocated by the Governor for the first three quarters of the present fiscal year. At that time there was about $2400 left to pay traveling claims, more than enough to cover the amount of the claims rejected.

Under the quarterly Budget Law, it was the duty of the Governor to require the heads of each department supported by the general revenue fund to file with him, 30 days before the beginning of each quarter, the amount of money needed by that department. At the same time the Governor was to find out how much tax money would be received and, if there was enough money to meet the needs of all the departments, it was his duty to approve each estimate. If he believed there was not sufficient money to meet the estimates, he was to disapprove estimates and ask the heads of the departments to revise such estimates so the estimates were within the

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[25] Crable v Carter, Oklahoma Supreme Court, Oklahoma Reports, (1940), Vol. 187, p. 421.

revenue. In handing down its opinion, the Supreme Court said:

> The power and authority of the Governor to veto items in an appropriation bill is contained in sec. 12, art. 6, of the constitution and art. 2, chapter 27, Session laws styled the Quarterly Budget Law which has effect of enlarging said veto power and permitting the exercise thereof in a different mode than that provided by constitution, contravenes said constitutional provisions and is valid and ineffective.[26]

In other words, the court said there was nothing in the constitution which gave the Governor a continuing veto power which might be exercised under any circumstances or conditions after the legislature has adjourned.

The last Supreme Court decision relating to the veto power of the Governor was filed May 16, 1944, in the case of Donly Heights Addition.[27] This case was brought about by a typographical error on a joint resolution. Inasmuch as the history of the case has nothing to do with the decision, it will not be related here, for errors may happen on any bill. In this case the court ruled:

> Where a joint resolution is enacted by both branches of the legislature and is transmitted to the Governor who does not approve and sign nor disapprove and return it with his objections to the house in which it originated, but communicates with the house in which the resolution originated, suggesting correction of a typographical error, such communication does not amount to a veto, since a bill or resolution may be returned only in the manner provided by the constitution. In such case, as a matter of law, the resolution remains in the possession of the Governor, and, on the expiration of five days, becomes effective without his signature.[28]

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[26] Ibid.

[27] Donly Heights Addition, Oklahoma Supreme Court, Oklahoma Reports, (1944), Vol. 194, p. 221.

[28] Ibid., p. 222.

From this decision it is clear that the Governor cannot return a bill to correct a typographical error without the time consumed in correcting the error becoming a part of the five day period given to the Governor to sign or veto bills.

B. Opinions of Attorney General

There has been only two occasions in which the Attorney General of Oklahoma has answered requests for opinions regarding the veto power. The first request came from Senator H. M. Curnutt in two different letters dated March 3, and May 6, 1933. The only real question presented by him to the Attorney General was "is a week day on which neither house of the legislature is in session to be included within the five day period?"[29] That is, is each day on which neither house is in session to be included in the five days that the Governor has to sign or veto a bill during a session of the legislature. The Attorney General cited two cases which indicated non-conclusiveness. In the case of State v Town of South Norwalk, he quoted:

> Constitution, art. 4, § 12, providing that every bill which shall have passed both houses shall be presented to the Governor, and, if not returned to the house in which it originated within three days, Sunday excepted, shall become a law, does not require a bill to be returned in three calendar days, but allows three days, during each of which the house where the bill originated is in session, so that it may be returned to it.[30]

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[29] Fred Hansen, Assist. Attorney General, in letter to H. M. Curnutt, Oklahoma State Senator, dated June 8, 1933. Copy to be found in the office of Attorney General of the State of Oklahoma.

[30] Ibid.

The exactly opposite rule was handed down in the case of State of Minnesota v Homs. From this case he quotes:

> In construing art. 4, § 11, of the constitution of Minnesota, in reference to the time and manner in which the Governor may return a bill with his objection thereto, i.e., effectually veto a measure, held: (1) In computing the three-day period in which a bill is to be returned, Sunday - not holidays - is the only day to be excluded; and (2) the requirement that the bill shall be returned to the house in which it shall have originated does not mean that it must be returned while such house is in session, but the return may be made to the presiding officer, secretary (or clerk), or to any member of such house.[31]

There is no place in the letter in which the Attorney General expressed a direct opinion. While the Attorney General was not required by law the answer the letter, he indirectly said the time did not count.

On March 26, 1943, Governor Robert S. Kerr wrote to the Attorney General and asked:

> Where a bill is sent to the Governor's office on March 20, 1943 at 3 o'clock P.M., and on Thursday, March 25, 1943, the house of representatives and the State Senate by joint resolution request said bill to be returned for correction, and the same was returned by the Governor, does this stay the five-day period, or could the bill by any possibility become a law without the Governor's signature, since it has been recalled by joint resolution, and is not in the possession of the Governor?[32]

In answer to this question the Attorney General replied:

> In the absence of a decision of one or the appellate courts of this state passing upon a question such as is set forth in your letter, the Attorney General is of the opinion that since the bill referred to by you was returned by the Governor to the Legislature for correction upon the concurrent action of both houses thereof, expressed by a joint resolution (a concurrent resolution

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31 Ibid.

32 Fred Hansen, Assist. Attorney General, in letter to Hon. Robert S. Kerr, Governor of Oklahoma, dated March 26, 1943. Copy to be found in office of Attorney General of State of Oklahoma.

> would have had the same effect), within five days, Sunday excepted, after the day same was presented by the Legislature to the Governor, and since the Governor has taken no action in the meantime in relation to said bill, same was properly returned by the Governor to the Legislature. The Attorney General is of the further opinion that the five day provision set forth in sec. 11, art. 6, supra, will not begin to run until if and after said bill has been presented by the legislature to the Governor, as provided in sec. 11, art. 6 of our constitution.[33]

A comparison of this opinion with two Supreme Court decisions is very interesting. In the case of Ex parte Benight a joint resolution was returned by the Governor for certain changes in the resolution that he desired and in the case of Donly Heights a joint resolution was returned for a typographical error. In both cases the results were the same. That is, the five day period granted to the Governor to sign or veto bills was not extended. However, in the Attorney General's opinion cited above, the period was extended. The only difference in the opinion of the Attorney General and the two cases cited above was that the legislature asked, by a joint resolution, for the return of the bill. It is to be concluded from this, that, if the legislature asks for the return of the bill, the time is extended until it is returned to the Governor, but, if the legislature does not ask for a return of the bill, the five day period will not be extended for any reason.

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[33] Ibid.

CHAPTER III

TYPES OF VETOES

The veto power of the Governor may be exercised on all bills. He may exercise the same on all joint resolutions with two exceptions. Joint resolutions that submit an amendment to the constitution, for the approval or rejection by the people, or calling a special election, may not be vetoed by the Governor because the legislature exercises exclusive authority under these two conditions. However, if the legislature employs a joint resolution to call a special election, the resolution must pass both houses by a two-thirds vote which is equal to the number of votes required to over-ride an executive veto. Also, "The veto power of the Governor shall not be extended to measures voted on by the people."[1]

A. The Message Veto

The Governor may exercise his veto in three ways. The first is called the "message" veto. The Oklahoma Constitution says, in part:

> Every bill which shall have passed the Senate and House of Representatives, and every resolution requiring the assent of both branches of the Legislature, shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large in the journal and proceed to reconsider it....[2]

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[1] Oklahoma Constitution, Art. V, Sec. 3.

[2] Ibid.

What the constitution refers to as "objections" is really the governor's reason for veto, expressed as a message. These messages vary in length from a few words to many. The reason for the veto also varied. The Governor may veto a bill for any reason that he desires.

All message vetoes may be found in the various Senate and House Journals. A careful check of the index of most journals, but not all, will show the location of the "message veto." In one particular case, the author found several message vetoes in the journals when the journals' index failed to show a single message veto. This was during Governor Robertson's administration.

An example of how some Governors have explained their reason for vetoing a bill is given in the following vetoed message.

March 8, 1917

To the Senate of the Sixth Legis. of the State of Okla.

> Senate Bill No. 151, by Killam and others, appropriates the sum of $20,000 or so much thereof as may be necessary, for the purpose of providing and equipping a school building at the Oklahoma State Home, located at Pryor, Oklahoma.
>
> The question as to the building of a state school building at said home was considered both by the State Board of Education and also by the State Board of Public Affairs, with the Governor of the State, before the budget was submitted to the legislature, but no such item was approved or recommended.
>
> I deem it unwise to approve this bill at this time. The necessity for the disapproval of an appropriation for anything connected with an orphans' home is regretted by me, but I am not satisfied in my own mind that it is the correct policy to school orphans separately from other children in the common schools. The common schools are conducted for the education of the children of all the people. They are the great schooling avenue through which every class should go, from the highest to the lowest. When I was inducted into office I found the present system in force

at the State Home for Orphans, but have never been satisfied with it. So many duties have been pressing upon me that I have not, as yet, had the opportunity to determine whether the proper solution has been found. That being the case and facilities being now available, such appropriation should not be approved until we are sure we are right. That can only be done by studying the history of such homes and institutions in all the states.

The orphans at the home at Pryor can be educated in the common schools by two means: First, by the transfer of the fund from the district from which the orphan comes to the school district where the home is located, and the State supplementing anything necessary to aid the common school district, not only in the maintenance of the school, but also in building and equipping school buildings. Second, for the State, by direct appropriation, to aid the local common school district in building and equipping buildings from the additional accommodations made necessary for the children from the orphans' home to attend the schools in the local district, and also to pay the necessary tuition for the employment of additional teachers made necessary and providing the other incidentals and necessary things.

By each of the foregoing plans no financial burden whatever will fall upon the local school district. True, the little orphans will go to the common schools and mingle with the people and the children of well-to-do families and self-sustaining families, but why should the little orphans not have the benefit of this association. That is one of the purposes of the common school system--where our great civilization can meet and flow mentally, physically and morally through one common channel. One of the dangers of maintaining an orphans' home as the one is now being maintained is that it affords so much comfort and so many facilities of convenience that the children over ten years of age, when homes are found for them, in the average family, are not in many instances satisfied with the conveniences of such family, and manifest their disapproval and dissatisfaction in so many ways that the head of the family is forced to take such child or children back to the home. Then, if school buildings are to be equipped with every modern facility at the orphans' home, there will be danger of too many families abdicating to the State that God-given responsibility of raising their children. The original purpose of the home was to gather in the orphans and find homes out over the State for them and retain them in the home only so long as necessary before such homes could be found for them. But by following out the present indicated policy to ultimate ends, this State home may be converted into a school and an institution for training orphans and the original purpose abandoned.

The theory of which mothers' pensions are founded is that it is better to aid the dependent mother so that the children may be retained by her and have home influence and education from her in the common schools. This is sound and wise.

I think we had better slow up on this matter and make further investigation before we finally commit the State to this indicated policy. Two years from now I will have report made after investigation and ready for the legislature. After such investigation, if it is found wise to build such institutions at the orphans' home, the appropriations can then be made. This bill is accordingly returned without approval.[3]

Respectfully submitted,
R. L. Williams, Governor

Another example in which the Governor has been brief in his veto message is as follows:

To the President and Members of the Senate.
Gentlemen:

This is to advise you that on May 17, 1941, after due consideration, I disapproved and vetoed:

Enrolled Senate Bill No. 84--By Hammond, Poasey, Logan and others. An act amending Art. 1, Ch. 64, Session laws of Oklahoma, 1935, relating to confederate pensions; providing the confederate pensions be payable quarterly in advance; and declared an emergency,

which was received in my office May 14, 1941, for the reason the provisions of this act are not in line with the needs of the State and the wishes of the people of the State, at a time when we are trying to find a means to provide the necessities of government.

Leon C. Phillips, Governor[4]

The two examples given are the two extremes that the governors have gone to in explaining their reason for vetoing a bill.

The Governor may change his mind in regard to a bill. "He may reconsider a veto and approve, or he may reconsider an approval and, veto

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[3] Journal of the Senate, Sixth Legislature, Regular Session, (Oklahoma City, Oklahoma, New Printing Company) p. 1293-1295.

[4] Journal of the Senate, Eighteenth Legislature, Regular Session, p. 1960-1961.

so long as it remains in his possession." But after a bill leaves his possession he cannot regain control for any purpose.[5]

The various legislatures have not followed a strict interpretation of the Constitution in regards to message vetoes. The Oklahoma Constitution says in part: "...if he (the Governor) approve, he shall sign it; if not, he shall return it with his objections to the House in which it shall have originated, who shall enter the objections at large in the journal and proceed to reconsider it[6] ... which is nothing short of a vote thereon."[7] In reality, the legislatures have not operated in this manner in regards to "message vetoes." When the vetoed bill, with the message is returned to the house in which it originated, if the author, or authors, presiding officer of that house, floor leader, or any member of that house may at that time, or later, call for a vote on the bill vetoed, the roll call is taken, but if no one asks for a roll call, there is no attempt to pass the bill over the veto of the Governor.[8] However, if two-thirds of the elected members of that house vote to pass the bill over the veto of the Governor, then it is sent to the other house, and, if two-thirds of the elected members of that house vote to pass the bill over the veto of the Governor, the bill becomes a law and is sent to the Secretary of State. When a vetoed bill is presented to either house

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[5] W. F. Durhan, Legislative Code, (Oklahoma City, Oklahoma, Harlow Publishing Co., 1929), p. 103.

[6] Oklahoma Constitution, loc. cit.

[7] Durhan, loc. cit.

[8] This information obtained by author in a personal interview with J. C. Nance, Purcell, Okla., March 25, 1950.

for approval or disapproval it cannot be amended.[9] Bills which contain the emergency clause may be vetoed by the Governor but it requires three-fourth vote of the elected members of each house.[10]

There has been only one occasion in which either house has questioned the legality of the Governor's message veto. This occurred during the regular session of the third legislature by the Senate. On this occasion Sen. Goulding made a point of order that the time in which the Governor had to approve or disapprove S.B. 47 had expired. He insisted that the chair rule on the point of order. The presiding officer of the Senate ruled "From the records before me, I hold that the five days have expired."[11] Then he ordered the bill transmitted to the Secretary of State.

B. The Pocket Veto

The second and most frequently used type of veto is called the "pocket veto." A pocket veto is just the opposite to a message veto. Some authorities refer to the types of vetoes as suspensive and absolute veto.[12] In the suspensive or message veto, the reason for the veto is given and it may be passed over the Governor. In the pocket or absolute veto, there is no chance of passing the bill over his veto and, as a rule

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[9] Durham, loc. cit.

[10] Ibid., p. 104.

[11] Journal of the Proceedings of the Senate, Third Legislature, Regular Session, (Oklahoma City, Oklahoma. Warden Printing Company, 1911), p. 808.

[12] W. Brooks Graves, American State Government, p. 389.

he gives no reason for his veto.

The pocket veto is made possible by the Oklahoma Constitution which says "No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within fifteen days after such adjournment."[13] Thus, if the Governor takes no positive action, which could only be by signing the bill, the bill dies or is vetoed. Again it works opposite to the message veto. In the message or suspensive veto if there is no action on the bill in five days, it becomes a law. If there is no action taken after the Legislature adjourns it does not become a law.

In the use of the pocket veto, not all Governors have selected the easiest way out. Occasionally, a Governor will write the word "vetoed" or disapproved" and sign his name. On some he will give his reason just below his signature. Others will give their reason in the form of a message which is attached to the bill. One example is House Bill No. 7 which was vetoed on April 8, 1927, after the Legislature had adjourned on March 24, 1927. The message reads:

> This bill deals with a subject which is near and dear to my heart. My desire and purpose was to approve it if I could. While the purpose is good, the attempted method of accomplishment is impossible.
>
> The bill is partially unconstitutional. It is exceedingly cumbersome. It would not expedite, but on the other hand befog and encumber the proceedings. It would tie up the entire revenues of counties, cities and school districts and to some extent that of the entire state.

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[13] Oklahoma Constitution, Section 11., p. 28.

> This is a matter that should be relieved. The power of corporations engaged in setting aside taxes and escaping their portion or burden for any particular year or years and thereafter is in the nature of a special privilege which wealth and organization enables them to enjoy. The remedy lies not in the direction of throwing all the tax into confusion but in the direction of preserving the tax lien for the future years and again apportioning it upon the tax rolls with the allowance of credits to those who theretofore paid the same.
>
> Henry S. Johnston, Governor[14]

C. The Item Veto

The third type of veto given to the Governor is the "item" veto. This power is found in art. 6, of the Oklahoma Constitution. The item veto strengthens the position of the Governor since he is not forced to approve the whole appropriation bill. He is given the power to cut out certain items of such bills that he does not believe is necessary. The constitution says that if he disapproves, he shall communicate such disapproval with his reasons therefor, to the house in which the bill shall have originated. This is very seldom done in a general appropriation bill. Occasionally it has been done in special appropriation bills.

> If an appropriation bill as a whole is vetoed it is returned to the originating house for reconsideration as a whole. But if only one or more items or appropriations are therein vetoed, then the whole bill is returned for a reconsideration of the vetoed items, only, and whether repassed or not, the remainder of the bill not vetoed is vital. Such bill having run the gauntlet of both houses it is to be sent to the Secretary of State, not to the Governor.[15]

Appropriation bills for the purpose of paying claims against certain State Institutions, Departments, Commissions, etc., are the ones that

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[14] House Bill No. 7, Eleventh Legislature, Regular Session, Secretary of State's Office, Oklahoma City, Oklahoma.

[15] Durham, op. cit., p. 93.

as a rule, feel the lash of the Governor with his item veto. A good example is House Bill No. 562 passed during the Eighteenth Legislature while Leon C. Phillips was Governor. Listed below is the amount of the claims vetoed and who they were for. All items that were not vetoed are now shown.

Northeastern Jr. College
Miami, Oklahoma

Holcomb Plumbing and Heating Co.	$57.30
Jasper Sipes Co.	62.50
McEldowney & Son for electric supplies	646.35
H. E. Ketcham Lumber Co.	132.03
Beckley-Cardy Co.	38.73
Miami Tin Shop	80.47
Bolender Brick and Material Co.	39.00
W. L. Buck	810.46
A. G. Spaulding Bros.	895.14

Southwestern. Weatherford, Oklahoma

Funk & Wagnall Co.	7.25
Acme Plate and Window Co.	38.64
Cal-Tex Refining Co.	162.99
Lone Star Book Deposit	6.20
Royal Typewriter Co.	751.00
Richards & Conover	13.63
Southwestern Biological Supply	7.50
Standard Roofing & Material Co.	13.90
Radio Electric	41.73
Chicago Apparatus Co.	72.32
W. M. Welch Mfg. Co.	31.05
Freehauf Southwestern Uniform Co.	905.65
Goodner-Vandeventer	480.38
Clarence E. Page	187.00
W. J. Pettee Co.	14.40
Star Engraving Co.	410.35
Motter Bookbinding Co.	109.78
Library Congress	79.91
Nichols Seed Co.	1.00
H. & H. Chevrolet	41.05
Merit Feed Store	1.00
Manning, Maxwell & Moore, Inc.	74.78
Harvard Apparatus Co.	8.92
American Electric Ignition	7.60
E. L. Cotter & Son	132.79
Crane Co.	85.14

Encyclopedia Britannica	$23.30
General Biological Supply	33.45
Bureau of Publications	10.80
Remington-Rand Inc.	335.38
College Book Shop	348.25
Remington-Rand Inc.	273.90
Remington-Rand Inc.	489.48
Virginia Fesler	75.00

All vetoed items are illegal and should be paid by W. W. Isle, by his mismanagement, the claims arose.

Northeastern State College, Alva, Okla.

Alva Electric Supply Co.	$268.68
American Standard Insurance Co.	207.00

Okla. A. & M. College, Stillwater, Okla.

Okla. Gas and Electric Co. (Land Utilization) This item vetoed. Expended project at Cookson Hills and no obligation of A. & M.	421.75
Funds borrowed from Stillwater Banks and other sources. This item vetoed as no information supporting claims against state.	6,870.13

Outstanding Bills	
Atlas Supply Co.	$ 7.92
Bradley-Creech Hardware	55.99
Boaz Awning and Upholstering Co.	24.00
Boardman Co.	8.30
Battery Service Station	9.95
A. & M. Cabinet Shop	16.75
College Book Store	34.45
Carpenter Paper Co.	4.65
Peeks Service Station	7.45
Printing Department	52.00
Piggly-Wiggly	20.57
Phillips Petroleum Co.	3.50
Payne County Motor Co.	100.65
Purity Baking Co.	2.68
Pittsburg Plate Glass Co.	65.00
Romney Davis Mercantile Co.	7.27
Rounds & Porter Lumber Co.	40.00
Stillwater Photo and Engraving	13.25
Stillwater Planing Mill	1.00

Stokes Paint Co.	$16.55
Southwestern Bell Telephone Co.	7.60
Swiler Bros. Plumbing Co.	77.69
Southwestern Stamps Works	4.61
Simank's Stillwater Ice Co.	17.25
Stillwater Laundry	2.80
Thatcher & Son	86.25
Tulsa Paper Co.	5.04
Thomas Duckwall	13.30
Tiger Drug	10.00
U. S. Supply Co.	5.31
Wabash Fibre Box Co.	74.37
Weaver Auto Supply Co.	165.14
Use of personal car at 4¢ per mile for travel to work	
Clift Furniture Co.	11.00
Bob Courtney	30.00
Central Drug	17.25
Chopin & Co.	232.05
Dairy Department	15.84
Engineering Department	13.08
Fritz Super Service	120.72
Field and Stream	17.58
Gasoline Purchased	1,311.09
Graybar Electric Co.	25.00
Repair Department	83.07
C. E. Hull & Son	34.18
Hardeman King & Co.	47.00
Hoke Lumber Co.	60.65
Ingham Lumber Co.	61.84
Kimble Glass Co.	7.00
Mideke Supply Co.	15.98
Murphy Hardware Co.	207.43
Insurance	870.49
Labor Payroll, repairing fences, work at goat farm, odd jobs	444.63
National Bank & Tag Co.	37.50
Oklahoma Fixture Co.	270.68
Oklahoma Paper Co.	23.88
Peterson Incubator Co.	45.35
Michel Afanasiev	24.01
F. M. Boumfortner	166.51
H. M. Briggs	36.12
Lee Brown	1.16
Ed Smith	35.68
Roy Stonaker	16.30
Crossman Printing Co.	77.20
George Totusek	21.60

West Oklahoma Home, Helena, Okla.

Selig Co.	$185.85
Enid China and Fixture Co.	136.46
Hobart Mfg. Co., Troy, Ohio	1.70
Riggs Optical	20.00
American Machine & Metal Co.	6.50
Jenkins Music Co.	17.89
Albert Pike Hospital	131.20
Ruby's Beauty Shop	1.70
Upjohn Co.	15.30
Mideke Supply Co.	18.40
Vinita Motor Co.	10.40
Service Beauty & Barber	11.00
Takamine Corporation	13.54
Fry Brothers	6.00
D. C. Bass and Sons, Enid, Okla.	1,340.55

State Board of Public Affairs

Kansas, Oklahoma & Gulf Railway Co.	$3,965.43
Refund on tangible property	
This item vetoed as not a legal claim against	
State General Revenue Fund. L. C. Phillips	
Atchison, Topeka & Santa Fe Railway Co.	
Renewing rails and fastening on 401 feet of track	
on the state property, Capitol grounds	224.89
Vetoed as an illegal claim. L. C. Phillips	
Sewer assessments on Lots 9 and 10, Block 2	
Stevens Hamill amended plot. In account with	
W. C. Bonney	122.56
Guy A. Huff, Reporter. For service in preparing case	
made on behalf of the Insurance Board on appeal	
to Supreme Court.	43.40

State Fire Marshall

W. J. Theimer, Service as State Fire Marshall	
Vetoed as an invalid claim	$99.96

Section 3. Appropriate out of the General Revenue Fund of the State of Oklahoma a sufficient amount to pay the legal owners of the following state warrants.

1933	271-297 inclusive	$1,685.95
1937	250-278 inclusive	1,703.84
1938	229-262 inclusive	2,787.09

1939	210-213 inclusive	$223.43
1939	215-246 inclusive	2,046.49
1939	248-250 inclusive	64.11

Deaf, Blind and Orphans Institute, Taft, Oklahoma

Wood & Co. $41.25

Western Okla. Tubercular Sanitarium, Clinton, Okla.

Wood & Co. $523.13 [16]

Thus, we see that the item veto may be used by the Governor to a very large extent should he so desire.

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[16] Secretary of State's Office, Oklahoma City, Oklahoma, House Bill No. 562.

CHAPTER IV

COMPARISON OF USE OF VETO POWER BY OKLAHOMA GOVERNORS WITH SPECIAL REFERENCE TO GOVERNOR LEON C. PHILLIPS

A. Governor Phillips' method of procedure

No attempt is made here to compare the method of veto procedure of Leon C. Phillips with that of the rest of the Governors, but I shall explain the method used by Governor Phillips realizing that each Governor had his own personal method of handling this procedure.

When Mr. Phillips made his inaugural address to the joint session of the legislature on January 10, 1939, among other things he said; "In the event pernicious lobbying does threaten the good name of the State of Oklahoma, I shall offer additional protection by vetoing any bill passed under such circumstances."[1] This reason was not given on any bills vetoed by Governor Phillips, however.

While the legislature was in session, Governor Phillips kept in a book a list of the bills that he was interested in. Also in this book he kept a record of each bill and the action taken on it. It showed what committee the bill was referred to and the action taken from time to time. By doing this Governor Phillips could watch his program as it worked its way through the legislature. Each morning in the Governor's office a conference was held at which the Governor discussed with his leaders

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[1] Journal of the House of Representatives, Seventeenth Legislature, Regular Session, (Oklahoma City, Oklahoma, Leader Press, Inc., 1939), p. 278-279.

certain items which he wished included in bills before the legislature, or certain items that he would like to have removed from such bills.[2] By this method the Governor was able, with the consent of the legislature, to shape the program that he desired.

After a bill passed both houses and had been signed by the presiding officer of each, it was sent to the Governor. The author would like to point out here that there is no legal requirement concerning the time in which a bill must be delivered to the Governor after it has passed both houses, except that the bill must be delivered before the legislature adjourns. While the average is two or three days, it may be several days or even several weeks. When bills reached Governor Phillips' office, his secretary signed a receipt for them showing the date in which they were received. Below is a duplicate of the receipt.

OFFICE OF THE GOVERNOR

This bill was received by the Governor

this _____ day of _____ 1939

at _____ o'clock _____

By _____
(Title)

When a bill was received, an entry was made in the Governor's book showing the time the bill was received, so that he would know when he had to approve or disapprove the bill. The next step was for the two

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[2] This information obtained by author in a personal interview with Leon C. Phillips, Oklahoma City, Oklahoma, June 20, 1949.

stenographers to check the bill to see if there were any clerical errors made when the bill was enrolled. After this was done, a short resume' of the bill was typed up and clipped to the bill. After studying the bill, if he approved, he signed the bill, but if he did not, he disapproved or vetoed the bill. The bill, along with a message of why he had disapproved it, was sent back to the house in which it had originated.

When the legislature adjourned, Governor Phillips, along with his advisor, Herbert Brannon, took all the bills that required executive study and went to the Governor's farm where they could study and discuss the bills without too many interruptions during this period. If he approved the bill, he signed it, if not, he let it die from lack of a signature.

An interesting and yet difficult problem to answer is how much was the "threat of veto" used by Governor Phillips. That is, to what extent did the Governor use the "threat of veto" to get what he wanted. Governor Phillips says he did not use this method. In an interview with Mr. Posey who was Senator during one of the Legislative Sessions under Governor Phillips, he seemed to agree to what Mr. Phillips said. Mr. Posey said: "When Mr. Phillips was elected Governor, the country was still in the depression. As a result, his control of patronage gave him all the control he needed."[3] Thus, we see that the Governor has other weapons at his disposal to get what he wants without using the "threat of veto".

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[3] This information obtained by author in a personal interview with Dr. H. V. Posey, Stillwater, Oklahoma, June 13, 1949.

In an interview with Senator Nance, just the opposite was found. The author asked Mr. Nance the following question. "As far as you know, has a Governor ever used his position to threaten to use the veto power on bills of certain Representatives and Senators to get certain bills passed that the Governor wanted?" Mr. Nance replied, "Yes." When asked if Governor Phillips had done this, he replied, "Yes, as much if not more than any other Governor."[4] Mr. Nance went on to point out that no Governor comes around personally to make such a threat but usually sent some of their own personal friends in a clandestine manner.

In an interview with Representative L. B. Peak, another method of control of the Governor over legislation was brought out. He said: "The Governor, with his control of patronage and highway construction, is able to control the legislature to a very large extent."[5] Thus we see that whether Governor Phillips or any other Governor has used the "threat of veto" for any purpose, there are other ways of obtaining desired legislation or of suppressing undesirable legislation.

B. Comparison as to number and reasons for veto

In comparing Governor Phillips with the other Governors in regard to the number of vetoes, we find that four Governors vetoed more bills than he did. At the top of the list is Governor Murray with a total of

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[4] This information obtained by author in a personal interview with James C. Nance, Purcell, Oklahoma, March 25, 1950.

[5] This information obtained by author in a personal interview with L. B. Peak, Sulphur, Oklahoma, May 23, 1950.

eighty bills vetoed. Not far behind him was Governor Cruce with seventy-two vetoes. Governor Williams was third with sixty-six vetoes, followed by Governor Kerr with sixty-one. Governor Phillips followed closely behind Governor Kerr with sixty vetoes. Oklahoma's first Governor, Governor Haskell followed with a total of fifty-five vetoes. Located near the average number of vetoes is Governor Robertson with thirty-nine. The average is forty-three. Governor Trapp and Governor Marland were next with thirty-five and thirty-one vetoes in the order given. One Governor, Mr. Turner, vetoed twenty-three bills, while Governor Walton vetoed nineteen and Governor Johnston twelve. Governor Holloway with only five used the veto the least of all the Governors in Oklahoma history.

In comparing the number of vetoes of the various Governors with the number of bills passed while they were in office and computing a percentage of bills vetoed, we find that they do not all follow in the same order. (The percent was figured to the nearest whole number.) Again, at the top of the list is Governor Murray with 80 bills vetoed and 408 passed which gives him a record of vetoing twenty percent of all bills submitted. Governor Cruce was second with 72 vetoed and 424 bills passed with a percent of seventeen. Governor Williams and Phillips were tied with 10 percent. Governor Williams had 66 vetoes and 639 bills passed as compared to Governor Phillips' 60 vetoes and 587 bills passed. Governors Haskell, Kerr, and Trapp were tied with 9 percent of all bills vetoed. Governor Haskell had 55 vetoes compared to 619 bills passed. Governor Kerr had 61 bills vetoed compared to 653 bills passed

and Governor Trapp had 35 bills vetoed as compared to 379 passed. Governor Robertson and Walton were the next in order with 7 percent of their bills vetoed. Governor Robertson had 39 vetoes compared to 524 bills passed. Governor Walton had 19 bills vetoed and 270 passed. Governors Johnston and Marland were also tied, having vetoed 5 percent of bills submitted for their approval. Johnston had 12 vetoes as compared to 236 bills passed and Marland had 31 vetoes as compared to 664 bills passed. Next to the bottom was Governor Turner with 3 percent. He had 23 vetoes as compared to 830 bills passed. The 830 bills passed during Governor Turner's administration is the largest number of bills passed during any administration. At the bottom of the list is Governor Holloway who had only 5 vetoes as compared to 298 bills for a veto record of 2 percent.

Before a comparison of the reasons for veto, the author thinks that it would be best to explain the different divisions that he has made. Since most bills have no reasons appended to them for being vetoed, they fall into one class. Sixty-nine percent of all bills vetoed were of this nature.

The second class of reasons for veto is on grounds of unconstitutionality of the measure. This is limited to bills being unconstitutional for reasons other than their being local bills. Local bills may be constitutional or unconstitutional, depending upon whether they follow the provisions of the constitution, but the author thought that since many bills were vetoed by Governors because they were local bills that this constituted a separate division. An example of what I mean in this

division is given in the following message that was sent by Governor Murray to the House of Representatives in regard to House Bill 448 in which he stated his reasons for veto. "Unconstitutional. There are more district judges in the state than now needed. Bill says Governor shall appoint judges with the advice and consent of Senate but article 7, section 3, second paragraph, says that 'The Governor shall make appointments to fill vacancy until the next general election.'"[6]

The third division is miscellaneous. All reasons for veto that did not fit into the other divisions were placed in this division. The reasons for veto here vary almost with the number. One example of this is found in a message written by Governor Williams in regard to House Bill 407.

> The item "For construction and equipment of addition to dormitory, $25,000"is disapproved. It was my intention to approve an appropriation for addition to this dormitory and I advised the Board of Agriculture that I would approve an appropriation for such purpose in the sum of $16,000 and it is my information that the Board of Agriculture submitted a budget in that amount. However, at that time I expected the Legislature to make a reasonable charge for rooms in said dormitory so as to yield six percent on the investment. I quote from recommendations to the Legislature. "Free dormitories cannot be provided for every boy and girl in the state. To furnish free dormitories to a few at the expense of the taxpayers can only be justified on the ground that these dormitories are intended for girls who have no high school facilities at home, but have to go away from home to have such advantages and on account of their tender age, their parents prefer them to be in dormitories where they can be under

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[6] Journal of the House of Representatives, Thirteenth Legislature, Regular Session, (Oklahoma City, Oklahoma, The Leader Press, Inc.) p. 2695-2696.

supervision that they could not otherwise have. That being so, a rental should be charged for each inmate so as to make the net aggregate equal to six percent of the state's investment.

The necessity for a boys' dormitory is not as great as a girls' dormitory, but whenever they are maintained by the State, the same rule as to charge for rooms should exist. The legislature refused to pass a statute. In that view, I can't get my consent that it is right to approve this appropriation and take this money out of the taxpayers' pockets, for I don't think it is right, and therefore this $25,000 item is disapproved....[7]

The fourth division that I have made is labeled "undesirable". Governor Robertson gives a good example of what I mean in his message veto of House Bill No. 82. In the message he notes:

This bill contains the germ of a good idea, and we doubtless need legislation along this line, but I am confident after careful reading of this measure that its working will be so complicated as to be practically unenforceable and impose such restrictions and hardships insofar as compliance with its provisions are concerned as to cause great and unnecessary complaint not only from the owners of motor vehicles but from vendors of gasoline and supplies.

Another reason, we have already imposed upon new owners of automobiles in this state in a recent act, new and additional burdens and would prove irritating and exasperating to the owners of cars and would result in much more harm than good that would accrue.[8]

In this division I have also placed all bills that were vetoed because they were impracticable. The bill may be a good bill but it would cause as much trouble to enforce it as it is worth.

The fifth division that I have made is labeled "clerical errors." In this case the meaning of the bill is not made clear because a word is left out, a word is misspelled, or there are other reasons for doubt

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[7] House Bill No. 407, Oklahoma State Law Library, Oklahoma City, Oklahoma.

[8] Journal of the House of Representatives, Seventh Legislature, Regular Session, (Oklahoma City, Oklahoma, Harlow Publishing Co.), p. 1935-1936.

arising as to the meaning of the bill. Again Governor Robertson gives us a good example of what we mean with his message veto of Senate Bill No. 31. In this message he said:

> Bill contains the following language: It shall be unlawful for any person, firm, corporation or association engaged in the production, manufacturing, distribution, purchase or sale of any COMMODY of general use, etc.,.. This bill as written is unintelligible and in my mind could not be intelligently construed with such word as "commody" in it, especially in view of the fact it was intended to be some other word and I am not prepared to say what was in the mind of the Legislature when the act was passed. This bill is worthless.[9]

The next division that I have made for reasons of veto is labeled "local bills." This is the most common reason given for vetoing a bill. Governor Phillips in his message veto for House Bill No. 432 gives a good example of vetoing a local bill. He remarked:

> This bill authorizes the appointment of a truancy officer in counties having a population of between 65,000 and 70,000, which obviously applies only to one county in this state. I am informed that the Assistant Attorney General who drew this bill for its author informed him when he drew it that it was unconstitutional. In spite of this fact the author introduced the bill and secured its passage. This is a local bill, as has been repeatedly held by the Supreme Court concerning similar acts. The slightest reference to the statutes and decisions affecting such legislation would have disclosed this fact to the author.
>
> Section 32 of Article V of the Constitution specifically prohibits special, local acts, without previous advertisement thereof. The records of the office of the Secretary of State do not disclose any proof of publication in this case. Section 46 of article V of the Constitution specifically prohibits special local acts creating offices, or prescribing the powers and duties of officers in school districts, and also prohibits local special act regulating the management of public schools.

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[9] Journal of the Senate, Regular Session, Eighth Legislature, (Oklahoma City, Oklahoma, Harlow Publishing Co.), p. 1432-1433.

> There is already full and complete statutory authority for the appointment of truancy officers in the various school districts of this state, the same being embodied in Section 7003, Oklahoma Statutes, 1931.
>
> A bill of this nature would increase the cost of operating the public schools in Muskogee County, especially the Separate Schools at a time when the school districts and the State of Oklahoma are searching for every way or means to reduce and curtail expenses in order to provide a full term of school.[10]

The seventh division that I have made in regards to the reason for veto was made because several bills have been vetoed because they were "no better than the present law." A good example of this type of veto comes from a message Governor Cruce sent to the House of Representatives stating his reasons for vetoing House Bill No. 68. He said:

> Objectionable from the standpoint of the people. It is not as good as the present law.
>
> The real purpose of the bill is contained in art. 1, which undertakes to abolish State Highway Department as it is presently constituted and transfer the duties of the Highway Commissioner to a State Engineer who shall be selected by the Geological Commission. This is such a potent effort to get rid of the present State Highway commissioner and to deprive the Governor of appointive power....[11]

The eighth division that I have made is for bills that have been vetoed because they are duplicates. There are no long reasons given by the Governors when they veto bills of this type. A good example is Senate Bill No. 48 which Governor Phillips vetoed for the following reason: "Vetoed because covered in House Bill No. 662 which has been approved and filed."

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[10] Journal of the House of Representatives, Eighteenth Legislature, Regular Session, (Oklahoma City, Oklahoma, Leader Press, Inc.) p. 3446-3447.

[11] Journal of the House of Representatives, Fourth Legislature, Extra Session, (Oklahoma City, Oklahoma, The Harlow-Ratliff Printing Co.) p. 1397-99.

The ninth and last division that the author has made is in regard to bills that have been vetoed because they were not considered by the Governor to be good business policy for the State. An example of this is found in a message written by Governor Phillips in vetoing Senate Bill No. 206. In this message the Governor said:

> My reason for vetoing the bill is that it seeks to extend the time for the payment of personal taxes for the current year. This practice, begun in the Murray administration as a relief measure, has been very largely responsible for the breakdown of our ad valorem tax collection machinery, both as to personal property taxes and real estate taxes.
>
> In addition, this bill affecting personal property does not have the safeguards contained in bills heretofore passed and approved affecting real estate.
>
> There is no provision for reviving a lien, and it is my opinion that the tax warrants, once invalidated, are not protected by the provisions of this bill, and that they will be a loss which will vitally affect schools and county governments in many of the counties of the State. This delay in the collection of personal taxes will cause a vast number of non-payable warrants to be issued, which will add an unnecessary burden of interest against the taxpayers of this State who recognize their obligations and pay their taxes as near the due date as possible and before penalty attaches.
>
> I am of the opinion that this would be bad legislation and bad government, and for that reason I have exercised my Constitutional duty of vetoing the measure.[12]

In comparing the various Governors with Phillips in regard to the reason for veto we find that there were two extremes. Governor Holloway who vetoed five bills gave absolutely no reason for any of his vetoes. At the other extreme was Governor Johnston who vetoed twelve bills and gave a reason for eleven. Near the middle of these two extremes is

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[12] Journal of the Senate, Regular Session, Eighteenth Legislature, p. 1709-1710.

Governor Phillips who gave no reason for veto on fifty-three percent of his bills. Governor Murray and Governor Williams were about the same with fifty-three and fifty percent respectively. Other Governors who have vetoed without reason a high percentage of bills are Cruce, Walton, Trapp, Marland, Kerr, and Turner. Their percentages run from eighty-five to ninety-three percent. Governor Haskell gave no reasons for veto on sixty percent of his bills while Robertson gave no reason on sixty-seven percent of his bills.

Eight of the Governors vetoed bills because they were unconstitutional. Five did not. Of these eight, Governor Murray vetoed the most with nine bills and Governor Phillips was second with six. Governor Robertson was next with five, and Cruce and Haskell followed with three and two, respectively. Governors Robertson, Marland and Kerr had one each.

All Governors, except two, vetoed bills for miscellaneous reasons. Governor Murray again led in this category with seven bills. Governors Williams and Phillips were next with six each. Governor Haskell vetoed five bills in this class. Governor Cruce, Johnston, Turner and Kerr vetoed three each for this category. Governor Robertson vetoed two while Governors Trapp and Marland vetoed one each.

Seven of the thirteenth Governors of Oklahoma vetoed bills because they thought they were undesirable. Governor Haskell led all the Governors in this group with five bills vetoed. Governors Williams and Robertson used this reason four times each to defeat the will of the legislature,

while Governor Phillips used it only twice. Governors Trapp, Murray, and Kerr each used this reason only once.

Of the five bills vetoed by various Governors for clerical errors, Governor Haskell used this reason three times while Robertson and Phillips used it once each. None of the other Governors vetoed bills for this reason.

The most common reason for vetoing bills has been because they were local bills. This reason has been used thirty-eight times by Governors. Exactly one-half, or nineteen of these, were used by Governor Murray. Governors Williams and Phillips gave this reason five times in vetoing bills. Governors Kerr and Johnston used this reason three times each in their vetoes. Governor Haskell, Robertson, and Marland found it necessary to use this reason only one time each.

Of the nineteen bills that were vetoed because they were no better than the present law, Governor Haskell led all other Governors with six. Governor Williams used this reason five times to prevent bills from becoming a law. Governor Cruce and Governor Johnston gave this reason three and two times respectively. Governors Robertson, Murray and Phillips used it only once. Six of the Governors failed to use this reason at all.

There have been only eleven bills vetoed because they were duplicates. In this category, Governor Phillips found it necessary to use this reason five times to prevent duplicate bills from becoming law. Governor Williams used it three times. Governors Robertson, Walton, and Kerr used it once

each. Eight Governors failed to use it at all.

Sixteen bills have been vetoed because they were not considered good business for the state. Of these sixteen, Governor Williams used this reason five times. Governor Johnston had to use it three times. Governors Cruce, Robertson, and Phillips found it necessary to use this reason twice each in putting aside the will of the legislative branch of government. Governors Walton and Murray, each, on one occasion gave this as their reason for denying their approval.

C. Comparison as to the type of veto used

Out of the 558 bills vetoed by the various Governors, ninety-four have been message vetoes. Out of the 94, almost one-third , or to be exact, thirty-one were written by Governor Murray. Governors Cruce and Robertson vetoed eleven each by message. Governor Phillips used this type of veto ten times while he was Governor, and Governors Kerr and Haskell were close behind with nine and eight respectively. Governor Turner used this method of veto five times, while Governor Marland only used it four. Governor Walton and Trapp used this method to return bills back to the legislature only twice, while Governor Williams used it but once.

The largest percent of the bills were vetoed by the pocket veto. Three hundred and seventy-nine bills have been vetoed by this method. In this type of veto, Governor Cruce led the list with fifty-three. Governor Kerr was next with fifty-one and Governor Williams followed closely behind with forty-eight. Governor Phillips came next with forty-five.

Governor Murray used this method thirty-nine times, while Governor Trapp used it thirty-three. Governor Marland failed to sign twenty-three bills after the legislature adjourned while Governor Haskell did the same twenty-one times. Governor Robertson had nineteen pocket vetoes and Governor Turner had eighteen. Governors Walton and Johnston exercised the pocket veto fourteen and eleven times respectively. Governor Holloway was at the bottom of the list with only four vetoes of this type.

While the item veto may contain a large number of vetoed items, as far as the number of bills is concerned, it has not been used as much as the other two types of veto. Governor Haskell found it necessary to veto certain items in twenty-six different bills. Governor Williams was second with 17 item vetoes and Governor Murray with ten. Governor Robertson vetoed parts of nine different bills, and Governor Grace did likewise to eight. Governor Phillips disapproved certain items in five bills while Marland did veto items in four legislative measures. Governor Walton vetoed items in three appropriation bills while Governors Johnston, Holloway, and Kerr each disapproved certain sections in only one bill. Governor Turner did not use the item veto at all; in fact he said that in the place of cutting any out, he had trouble getting them all in.

The veto has been very effective in preventing bills from becoming law. Only seven messages vetoed and one item veto were overruled by legislative action in repassage of bills. Governor Haskell vetoed an item for himself of $298 but the legislature passed it over his head.

The seven message vetoes were overridden in the terms of two Governors. Governor Cruce had three bills passed over his veto, while Governor Murray had four passed over his veto.

There are no figures available to compare the use of the veto power in Oklahoma with its use in the other states, but there are limited figures available to compare the use of the veto power in Oklahoma with that in the State of Illinois. The percentage of bills vetoed in Oklahoma has varied from 2 percent by Governor Holloway to 20 percent by Governor Murray with an average of 10 percent by all of the Governors. In Illinois, it has averaged 11 percent.[13] The percentage of the bills vetoed by Governor Phillips was 10 percent. Thus we see that Governor Phillips was about average in his vetoes as compared with all the other Governors of Oklahoma and one percent below the percent of bills vetoed by the Governor of Illinois during a similar period.

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[13] Illinois Legislative Council, The Veto Power in Illinois, Publication 56, p. 13.

CHAPTER V

CONCLUSIONS

From this study it is concluded that:

1. While some Governors have used the veto power more frequently than others, there has been no serious abuse of the veto power in Oklahoma. On the contrary, some Governors may have failed to use their power as often as they should.

2. The veto has been very effective in Oklahoma. There have been only seven message vetoes and one item veto passed over the vetoes of the Governors, which is proof that once a Governor has refused his permission, the chances of the bill becoming a law are very small.

3. Legislatures of the State of Oklahoma have been guilty of attempting to pass many local bills. While it was not the purpose of this study to determine how many succeeded in going through, a large number failed to secure gubernatorial approval. Thus, many bills that would have been unconstitutional have been prevented from becoming a part of the laws of the State.

4. While most of the bills vetoed have been negated by pocket vetoes, this is the fault of the legislature for waiting until the last few days of the session to pass the bills, and not the fault of the Governors waiting until the Legislature had adjourned before taking action. More direct action on the part of the Legislature would reduce the percent of pocket vetoes. This hesitancy on the part of the Legislature to act before the closing days of the legislature leads one to

believe that some bills are passed by the legislature with the expectation that they will be vetoed by the Governor.

5. The practice of reducing items in appropriation bills would have given Governors great control over appropriations, but this procedure has been declared unconstitutional by the courts. The present method of an executive budget is undoubtedly better.

6. Although the veto power has been used to a very large extent to limit the growing increase in expenditures, it has not been sufficient to prevent enormous increases in state government.

7. While many good veto messages have been written by the various Governors, others have not gone into detail enough to be of any help to the Legislature in correcting the objectionable features of the bill.

8. There are other means by which the Governor can secure certain legislation that he desires without resorting to the "threat of veto".

9. The veto power of the Governor is desirable and practicable. That the legislature realized this is shown by their refusal to pass a joint resolution calling for a constitutional amendment to be voted upon by the people to abolish the veto power of the Governor.

10. Bills which have been sent to the Governor for his approval may be returned only when the legislature requests it.

11. While engaged in considering bills which have been passed by both houses of the legislature, the Governor is acting in a legislative capacity, and as such, can exercise his veto power while the Legislature is in session or within fifteen days after it adjourns. At no other

time can he exercise this power.

12. When a Governor vetoes an item in an appropriation bill, he must veto the item en toto. However, certain items appropriating money for the hiring of experts, which has been provided for by the constitution, may not be vetoed by the Governor.

13. A bill that was presented to the Governor less than five days before adjournment of the legislature, and was not approved by the Governor within fifteen days after its adjournment, never became a law.

14. Whenever a Governor vetoes an item in an appropriation bill and the vetoed item is not sent back to the legislature because they have adjourned, the item vetoed is not valid, not because the Governor vetoed the item, but because it has not become a law according to the provisions of the constitution.

APPENDIX

CLASSIFICATION AND NUMBER OF BILLS VETOED BY ALL GOVERNORS OF OKLAHOMA[1]

Governor	House Bills — Kind of Veto				Senate Bills — Kind of Veto			
	Message	Pocket	Item	Total	Message	Pocket	Item	Total
Haskell	3	13	15	31	5	8	11	24
Cruce	4	38	2	44	7	15	6	28
Williams	0	26	12	38	1	22	5	28
Robertson	8	15	7	30	3	4	2	9
Walton	1	4	1	6	1	10	2	13
Trapp	1	13	0	14	1	20	0	21
Johnston	0	8	1	9	0	3	0	3
Holloway	0	1	0	1	0	3	1	4
Murray	17	25	4	46	14	14	6	34
Marland	4	17	0	21	0	6	4	10
Phillips	7	23	3	33	3	22	2	27
Kerr	8	23	0	31	1	28	1	30
Turner	3	16	0	19	2	2	0	4
Total	56	222	45	323	38	157	40	235

[1] These bills are found in the following places:
(a) Various Senate and House Journals
(b) Secretary of State's Office
(c) State Law Library, Oklahoma City, Oklahoma
(d) Session Laws
(e) Oklahoma Historical Society Building

GOVERNORS' REASONS FOR VETO[1]

	No reason	Unconstitutional	Miscellaneous	Undesirable	Clerical errors	Local Bill	No Better than Present Law	Duplicate	Not good Business	Total
Haskell	33	2	5	5	3	1	6	0	0	55
Cruce	61	2	3	0	0	0	3	0	2	72
Williams	33	5	6	4	0	5	5	3	5	66
Robertson	26	1	2	4	1	1	1	1	2	39
Walton	17	0	0	0	0	0	0	1	1	19
Trapp	33	0	1	1	0	0	0	0	0	35
Johnston	1	0	3	0	0	3	2	0	3	12
Holloway	5	0	0	0	0	0	0	0	0	5
Murray	42	9	7	1	0	19	1	0	1	80
Marland	28	1	1	0	0	1	0	0	0	31
Phillips	32	6	6	2	1	5	1	5	2	60
Kerr	52	1	3	1	0	3	0	1	0	61
Turner	20	0	3	0	0	0	0	0	0	23
Total	383	28	40	18	5	38	19	11	16	558

[1] These reasons are based on messages found in the various House and Senate Journals and messages found on the various enrolled bills.

COMPARISON OF NUMBER OF BILLS
PASSED WITH NUMBER VETOED

	Number of bills passed[1]	Number vetoed	Percent of bills vetoed
Haskell	619	55	9%
Cruce	424	72	17%
Williams	639	66	10%
Robertson	524	39	7%
Walton	270	19	7%
Trapp	379	35	9%
Johnston	236	12	5%
Holloway	298	5	2%
Murray	408	80	20%
Marland	664	31	5%
Phillips	587	60	10%
Kerr	653	61	9%
Turner[2]	830	23	3%
TOTAL	6531	558	
AVERAGE	502	43	10%

[1] The number of bills passed is based on the number of bills in the Session Laws and do not come from the Senate or House Journals as they do not always agree.

[2] These figures do not include the Special Session of the Twenty-Second Legislature.

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Turner, Roy J., Oklahoma City, Oklahoma, June 15, 1950.

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