



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL

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**OAG 24-06**

*Subject:* Whether the Governor’s purported line-item vetoes of 2024 House Bill 8 are valid, and whether the Reviser of Statutes should include the vetoed sections of the bill in the Kentucky Acts and the Kentucky Revised Statutes.

*Requested by:* Hon. David W. Osborne  
Speaker of the Kentucky House of Representatives

Hon. Robert Stivers  
President of the Kentucky Senate

*Written by:* Aaron J. Silletto, Executive Director  
Office of Civil and Environmental Law

*Syllabus:* Because 2024 House Bill 8 is not an appropriations bill, the Governor’s purported use of the line-item veto exceeds the powers granted to him by Section 88 of the Kentucky Constitution and is therefore invalid. The sections of House Bill 8 that the Governor purported to veto became law when the rest of the bill did, and therefore, those sections must be included in the Kentucky Acts and the Kentucky Revised Statutes.

***Opinion of the Attorney General***

During the 2024 Regular Session, the Kentucky General Assembly enacted House Bill 8, which is titled “AN ACT relating to fiscal matters, making an appropriation therefor, and declaring an emergency.” The final version of the bill passed both chambers on March 28, 2024—by votes of 34-0 in the Senate and 87-9 in the House of Representatives—and was delivered to the Governor the same day. On April 9, 2024, the Governor, citing Section 88 of the Kentucky Constitution, issued a veto message as to House Bill 8, in which he purported to line-item veto two parts of the bill. Three days later, the House of Representatives ruled that the Governor’s two

line-item vetoes of the bill were invalid and filed the bill without the Governor's signature with the Secretary of State.<sup>1</sup>

The Speaker of the House and the President of the Senate now request an Opinion of this Office regarding two questions:

1. Was the Governor's purported use of the line-item veto power found in Section 88 of the Kentucky Constitution effective to strike language from the Act, or because the bill was not an appropriation bill, was the veto a nullity such that the purportedly vetoed language is and remains the law of the Commonwealth?
2. Should both the Kentucky Acts and the Official version of the Kentucky Revised Statutes, as codified by the Reviser of Statutes, include as enacted law the sections purportedly vetoed by the Governor?

The nature of the Governor's line-item veto power is important to answering the first question. Section 27 of the Kentucky Constitution separates the powers of government among the three "departments": Legislative, Executive, and Judicial. "No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, *except in the instances hereinafter expressly directed or permitted.*" Ky. Const. § 28 (emphasis added). Section 29 of the Constitution vests the "legislative power" in the General Assembly, and Section 69 vests the "supreme executive power" in the Governor.

Section 88 of the Kentucky Constitution provides in relevant part:

Every bill which shall have passed the two Houses shall be presented to the Governor. If he approve, 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 in full upon its journal, and proceed to reconsider it. . . . The Governor shall have the power to disapprove *any part or parts of appropriation bills embracing distinct items*, and the part or parts disapproved shall not become a law unless reconsidered and passed, as in case of a bill.

(Emphasis added.) The Governor's veto power under Section 88 is a *legislative* power, as it provides the Governor with power to determine, or at least shape, the content of the Commonwealth's laws. *See, e.g., Arnett v. Meredith*, 121 S.W.2d 36, 37–38 (Ky. 1938); *Fletcher v. Commonwealth ex rel. Stumbo*, 163 S.W.3d 852, 862 (Ky. 2005); *see also Legislative Research Comm'n ex rel. Prather v. Brown*, 664 S.W.2d 907, 912 n.9 (Ky. 1984). The veto power is one of the "instances" under Section 28 in which a member of one branch of government is "expressly directed or permitted" to exercise

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<sup>1</sup> 2024 Ky. Acts ch. 166.

a governmental power otherwise belonging to another branch. *Arnett*, 121 S.W.2d at 37; *Fletcher*, 163 S.W.3d at 862. “[A]ll provisions for such permitted encroachments by one department in the exercise of functions properly belonging to another, that may be found in the Constitution, are not only mandatory, but *should be strictly construed*.” *Arnett*, 121 S.W.2d at 38 (emphasis added); *LRC v. Brown*, 664 S.W.2d at 912. Because Section 88 provides for an exception to the otherwise generally applicable separation of powers by conferring a legislative power on the Governor, it must be “strictly construed.”

The final sentence of Section 88 grants to the Governor the power to issue a “line-item veto” of a bill passed by the General Assembly, also called a “partial veto.” But the Governor’s line-item veto power does not apply to all bills: “While the Governor’s veto power applies to all bills, it is only in the case of ‘appropriation bills’ that a line-by-line veto may be exercised.” *LRC v. Brown*, 664 S.W.2d at 928. Thus, the first question that must be answered in analyzing the validity of the Governor’s line-item vetoes is whether House Bill 8 is an “appropriation bill[ ]” within the meaning of Section 88.

The Kentucky Constitution itself distinguishes between bills for raising revenue and appropriation bills. See Ky. Const. § 47 (requiring “bills for raising revenue” to originate in the House of Representatives); *id.* § 55 (exempting “general appropriation bills” from general rule that all bills enacted by the General Assembly take effect 90 days after adjournment); *id.* § 88 (providing for a line-item veto of “appropriation bills”); see also *id.* § 46 (requiring approval of a majority of members elected to both the Senate and the House of Representatives to pass “[a]ny act or resolution for the appropriation of money”). Thus, the terms appear to be mutually exclusive categories. See *Commonwealth ex rel. Ky. Dep’t of Revenue v. N. Atl. Operating Co.*, No. 2008-CA-00304-MR, 2009 WL 792727, at \*2 (Ky. App. Mar. 27, 2009) (holding that including a revenue measure in a general appropriation bill violates the “single subject” rule in Section 51 of the Constitution).

Kentucky courts have held that a bill is a “bill[ ] for raising revenue” under Section 47 of the Constitution “when *the primary purpose* of that piece of legislation is to generate income.” *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 471 (Ky. 1998) (emphasis added). On the other hand, no Kentucky case has squarely defined “appropriation bills” as the term is used in Section 88.<sup>2</sup> An appropriation is an authorization, however worded, to pay money out of the state treasury. See, e.g., *Miller v. Sturgill*, 202 S.W.2d 632, 634 (Ky. 1947); *Davis v. Steward*, 248 S.W. 531,

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<sup>2</sup> Where a bill created a government program, levied or assessed a fee to support that program, and then directed the disbursement of those funds collected to implement the program, the Supreme Court held the bill was an “appropriation bill.” *D & W Auto Supply v. Dep’t of Revenue*, 602 S.W.2d 420, 422 (Ky. 1980). But in *D & W Auto Supply*, it was “not seriously argued” that the law at issue, the Litter Control Act, “d[id] not contain an appropriation.” *Id.* (emphasis added). The Court did *not* hold that any bill containing a single appropriation provision, see KRS 48.010(3)(b) (defining “[a]ppropriation provision”), is an “appropriation bill[ ]” for purposes of Section 88.

532 (Ky. 1923) (defining “appropriation” as “the setting apart of a particular sum of money for a specific purpose”); *see also* KRS 48.010(3)(a) (defining “appropriation” to mean “an authorization by the General Assembly to expend a sum of money not in excess of the sum specified, for the purposes specified in the authorization. . .”). Because the categories of bills for raising revenue and appropriation bills appear to be mutually exclusive, an “appropriation bill[ ]” for which the line-item veto is authorized in Section 88 must mean a bill with *the primary purpose* of spending public funds. So, if the bill primary deals with raising revenue—*e.g.*, establishing new taxes, modifying tax rates, creating exemptions from existing taxes, and the like—it is not an “appropriation bill[ ]” under Section 88.

According to its title, House Bill 8 is a bill “relating to fiscal matters.” A bill relating to fiscal matters could, of course, be an appropriation bill. But it could also be a bill for raising revenue, *i.e.*, a tax bill. Thus, the first part of House Bill 8’s title does not resolve conclusively whether it is an “appropriation bill” subject to the Governor’s line-item veto under Section 88. A brief review of the contents of the bill is necessary.

House Bill 8 is 198 pages long and consists of 68 sections. The bill addresses a number of matters related to the fiscal health of the Commonwealth, such as extending the petroleum storage tank environmental assistance fund (§§ 1–3), requiring a Department of Revenue report (§ 4), allocating the current excise tax on racetrack admissions among various Kentucky Horse Racing Commission funds (§§ 5–8), correcting a statutory citation regarding advance deposit account wagering licenses (§ 9), providing sales tax exemptions for certain services (§ 10), providing for a new tax credit for broadband (§§ 11–13), changing a date reference to the Internal Revenue Code in an income tax statute (§ 14), amending a definition in an income tax statute (§ 15), extending a deduction applicable to the corporate income tax (§ 16), extending a coal severance tax refund process (§ 17), and eliminating the electric vehicle ownership fee as to “hybrid vehicles” (§§ 18–20). The bill also has provisions relating to driver’s license fees (§ 21), amending certain requirements for Department of Revenue publications (§§ 22–27), allowing a deduction against the ride share tax (§ 28), extending a date applicable to tax increment financing (§ 29), transferring revenue received from the sale of child victims’ trust fund special license plates (§ 30), amending the statute authorizing certain counties to impose a license fee on vehicle rentals (§ 31), and extending the state fee on new tires (§ 32). The bill also has provisions regarding powers of appointment (§ 35), changing a date reference in a corporate income tax statute (§ 36), and creating new tax incentives for data centers (§§ 37–42). Finally, the bill has several non-codified provisions regarding the cost of county audits (§ 48), authority for the Kentucky Communications Network Authority and Labor Cabinet to sell certain property (§§ 49–50), Kentucky Group Self-Insurance Guaranty Fund assessments (§ 51), Kentucky State Police billing for certain security services it provides (§ 52), jailer canteen accounts (§ 53), authorization of Kentucky Infrastructure Authority fees (§ 54), the cost of certain audits performed by the Auditor of Public Accounts (§ 55), Personnel Board

assessments (§ 56), Kentucky River Authority water withdrawal fees (§ 57), school district reimbursements for Urgent School Needs Assistance (§ 58), the use of insurance premium taxes (§ 59), Personnel Cabinet employee health insurance benefits assessments (§ 60), increasing Executive Branch Ethics Commission registration fees (§ 61), a tax expenditure analysis by the State Budget Director (§ 62), and providing effective dates of certain provisions of the bill (§§ 63–67) and an emergency clause (§ 68). The Governor purported to exercise his line-item veto power regarding two other portions of House Bill 8: the sections allowing an exemption from the sales tax on currency or bullion (§§ 33–34) and those extending a Department of Revenue tax amnesty program (§§ 44–47).<sup>3</sup>

As can be seen from this brief summary of the contents of House Bill 8, the bill is almost entirely addressed to sundry issues related to the taxes imposed, and fees assessed, by the state and local governments.<sup>4</sup> It is thus clear that the primary purpose of the bill is generating income for the state and local governments, not spending public funds. House Bill 8 is therefore a “bill[ ] for raising revenue” under Section 47 of the Kentucky Constitution and not an “appropriation bill[ ]” under Section 88. Because the Governor’s veto power must be strictly construed, and because House Bill 8 is not an “appropriation bill[ ],” Section 88 does not empower the Governor to use his line-item veto on it. The Governor’s attempted line-item vetoes of House Bill 8 were nullities, as they exceeded his constitutional authority. Therefore, those portions of the bill against which the Governor purported to use his line-item veto<sup>5</sup> became law with the rest of the bill when it was filed with the Secretary of State on April 12, 2024.

This conclusion is consistent with this Office’s one prior opinion assessing the validity of the Governor’s exercise of his line-item veto power. In 2003, the General Assembly passed a bill that included a section making an appropriation from the tobacco master settlement agreement (“MSA”) fund. *See* 2003 Ky. Acts ch. 194 § 17 (“HB 390”). A different section of the bill, Section 15, enacted a new provision of the corporate tax code but did not itself include an appropriation. *Id.* § 15. When HB 390 was presented to Governor Paul Patton, he issued a line-item veto as to Section 15 only, leaving the provisions of the bill relating to the MSA fund intact. A Representative then asked this Office “a question of first impression in Kentucky,” specifically, “May a Governor use the line item [*sic*] veto power found in Section 88 to veto a non-appropriating provision that is contained in a bill that makes an unrelated

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<sup>3</sup> The Governor did not purport to veto a fifth section of the bill applicable to the Department of Revenue tax amnesty program (§ 43).

<sup>4</sup> The second part of House Bill 8’s title does state that the bill “mak[es] an appropriation.” But the bill does not directly appropriate any new monies from the state treasury. To the extent there is any “appropriation” in the bill at all, it would appear to be limited to extending into future years certain fees that are earmarked for designated purposes.

<sup>5</sup> 2024 Ky. Acts ch. 166 §§ 33–34, 44–47.

appropriation elsewhere?” OAG 03-003, 2003 WL 2004172, at \*2. The Office answered that question in the negative.

To answer the Representative’s question, the Office surveyed the scope of the line-item veto power in those states having such a provision in their constitutions. It found that the majority rule was adopted by the U.S. Supreme Court as follows:

The term “appropriation act” obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation. *An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury.* To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident.

OAG 03-003, 2003 WL 2004172, at \*3 (quoting *Bengzon v. Secretary of Justice of Philippine Islands*, 299 U.S. 410, 413 (1937)) (emphasis added).<sup>6</sup> The Office concluded:

Applying the majority rule to the Governor’s line item [*sic*] veto of section 15 of HB 390, it is plain that it is invalid. Under this case law, HB 390 is simply not an “appropriations bill.” Unlike, for instance, the three branch budget bills whose introduction, analysis, and enactment is governed by KRS Chapter 48 . . . the only appropriation in HB 390, found in section 17, is ‘incidental’ to the Revenue Cabinet fulfilling its new duties. In fact, section 15, the vetoed piece, does not even contain an appropriation. We believe a Kentucky court would not hesitate to strike down this veto.

*Id.* at \*4. Thus, Governor Patton’s purported line-item veto of HB 390 was “unconstitutional, violate[d] the separation of powers, and [was] a nullity.” *Id.* at \*5.

The *Bengzon* definition of an appropriation bill, and thus, the definition employed in OAG 03-003—“one the primary and specific aim of which is to make appropriations of money from the public treasury”—is entirely consistent with the “primary purpose” test applied herein. It is not the “primary and specific aim” of House Bill 8 to appropriate money from the state treasury. Nor is House Bill 8 a bill “proposing sundry appropriations of money,”<sup>7</sup> as opposed to “a bill proposing sundry

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<sup>6</sup> *Bengzon* is not the decision of a State’s highest court interpreting its own constitution. Rather, the U.S. Supreme Court was interpreting the line-item veto provision in the Organic Act applicable to the pre-World War II provisional government of the Philippines. 299 U.S. at 411.

<sup>7</sup> Under the *Bengzon* test, a bill “proposing sundry appropriations of money” would certainly include each of the four biennial branch budget bills. See KRS 48.010(6) (defining “branch budget bill”); see

provisions of general law and carrying an appropriation as an incident.”<sup>8</sup> Accordingly, it is simply not an “appropriation bill[ ]” against which the Governor may use his line-item veto.

All this is not to say, of course, that the Governor has no power under the Kentucky Constitution with respect to a bill the primary purpose of which is to raise revenue. He still has power under Section 88 to either veto the bill *in toto*, or to approve it *in toto*. But because Section 88 does not authorize a line-item veto of a bill for raising revenue, it “must be approved or rejected as a whole and an attempted partial veto is a nullity.” 1 Sutherland, *Statutes and Statutory Construction* § 16:8 (7th ed.).

Having determined that the Governor’s attempted line-item vetoes of House Bill 8 were nullities, the answer to the second question posed by the House Speaker and Senate President follows as a matter of course. The Governor’s attempted line-item vetoes had no effect on the bill. Thus, the Governor took no valid action as to House Bill 8 under the legislative power granted him by Section 88 of the Constitution. When the Governor takes no action on a bill that has been passed by the General Assembly within ten days after its presentment to him under Section 56 of the Constitution, it becomes a law. Ky. Const. § 88; see *Ficke v. Bd. of Trs. of Erlanger Consol. Graded Sch. Dist.*, 90 S.W.2d 66, 68 (Ky. 1936) (“[I]f the Governor returned the act to the Secretary of State without approval or disapproval, it would take effect as of the date such return was made by him at any time within the ten-day period, since that action on his part was in its essence and effect an approval by him of the act.”). The same must be true when the Governor purports to act, but he does not act as required by the Constitution. Thus, the entirety of House Bill 8, including those sections the Governor purported to veto, became law when it was filed with the Secretary of State.

“The official version of the Kentucky Revised Statutes shall contain all permanent laws of a general nature that are in force in the Commonwealth of Kentucky.” KRS 7.131(2). Because the sections of House Bill 8 that the Governor purported to veto became law, notwithstanding his attempted vetoes, when filed with

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*also* 2024 Ky. Acts ch. 148 (House Bill 264) (the 2024–26 Judicial Branch budget bill); 2024 Ky. Acts ch. 175 (House Bill 6) (the 2024–26 Executive Branch budget bill); 2024 Ky. Acts ch. 179 (House Bill 263) (the 2024–26 Legislative Branch budget bill); 2024 Ky. Acts ch. 180 (House Bill 265) (the 2024–26 Transportation Cabinet budget bill). Doubtless, such a bill also would include any bill that, though not one of the four branch budget bills, also is primarily aimed at appropriating money from the state treasury. See, e.g., 2024 Ky. Acts ch. 173 (House Bill 1) (making multiple one-time appropriations from the Budget Reserve Trust Fund Account); 2024 Ky. Acts ch. 223 (Senate Bill 91) (amending previously enacted branch budget bills and making supplemental appropriations).

<sup>8</sup> Under *Bengzon*, “a bill proposing sundry provisions of general law and carrying an appropriation as an incident,” like House Bill 8, might include an “appropriation provision,” see KRS 48.010(3)(b) (defining “appropriation provision”), even though the primary purpose of the bill is not spending public funds.

the Secretary of State, the amendments to the Kentucky Revised Statutes made by those sections must be included in the Kentucky Acts (session laws) and the official version of the Kentucky Revised Statutes. The Reviser of Statutes has a statutory duty to incorporate these provisions of House Bill 8 into the permanent laws of the Commonwealth. KRS 7.140(1).

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