



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**KRIS W. KOBACH**  
ATTORNEY GENERAL

MEMORIAL HALL  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.AG.KS.GOV

January 24, 2025

ATTORNEY GENERAL OPINION NO. 2025-2

Honorable Kristey Williams  
State Representative, 77<sup>th</sup> District  
606 Stone Lake Court  
Augusta, Kansas 67010

Honorable Renee Erickson  
State Senator, 30<sup>th</sup> District  
26 N. Cypress Drive  
Wichita, Kansas 67205

Re: Constitution of the State of Kansas—Legislative—Approval of Bills;  
Veto; Governor’s Line-item Veto Power

Synopsis: The Governor’s use of the line-item veto to excise the questioned proviso contained within Section 2(a) of 2024 House Substitute for Senate Bill 387 while leaving the specific item of appropriation of \$5 million exceeded the authority granted to the Governor under Article 2, Section 14(b) of the Constitution of the State of Kansas.

Dear Representative Williams and Senator Erickson:

As members of the Kansas Legislature, specifically Chair of the House K-12 Education Budget Committee and Vice-Chair of the Senate Education Committee,<sup>1</sup> respectively, you ask whether the Governor’s veto of a proviso placing conditions on the \$5 million in Safety and Security Grants appropriated by the Legislature exceeded the Governor’s authority to line-item veto items of appropriations.

---

<sup>1</sup> Representative Williams and Senator Erickson held these committee positions at the time the letter was written in 2024.

As you are aware, 2024 House Substitute for Senate Bill 387 contained education appropriations for the fiscal years ending June 30, 2024, June 30, 2025, and June 30, 2026.<sup>2</sup> The bill was enrolled and presented to the Governor on May 6, 2024,<sup>3</sup> and signed into law on May 15, 2024.<sup>4</sup> The bill became effective on May 30, 2024, upon its publication in the Kansas Register.<sup>5</sup> However, the Governor line-item vetoed a portion of Section 2(a) of the bill.<sup>6</sup> That section included a \$5 million appropriation for school safety and security grants. Included with the \$5 million appropriation was a proviso directing how the appropriation was to be spent. Significantly, the Governor did not line-item veto the \$5 million appropriation, but only the proviso. This proviso stated as follows:

*Provided*, That expenditures shall be made by the above agency from the school safety and security grants account for fiscal year 2025 for disbursements of grant moneys approved by the state board of education for the: (1) Acquisition of automated external defibrillators and routine maintenance of such devices; (2) purchase and installation of security cameras that are comparable with the firearm detection software specified in paragraph (3); and (3) notwithstanding the provisions of K.S.A. 72-1151, and amendments thereto, or any other statute, acquisition and implementation of firearm detection software that: (A) Can reduce the threat and impact of gun violence by providing a firearm detection software solution that integrates into existing security camera systems; (B) is designated as qualified anti-terrorism technology under the federal SAFETY act, 6 U.S.C. § 441 et seq.; (C) complies with industry standard information security frameworks, including ISO 27001 and SOC 2 type 2; (D) is managed through a constantly monitored operations center that is staffed by highly trained analysts to ensure rapid communication of possible threats to end users; (E) is developed in the United States without the use of any third-party or open-source data; (F) is protected by an awarded patent that includes a training database populated with frames of actual videos of firearms that were taken in relevant environments across diverse industries; (G) is utilized in at least 30 states with customers in the public and private sectors; (H) does not store, monetize or collect any biometric data or personally identifiable information; and (I) is able to detect three broad firearm classifications with a minimum of 300 subclassifications and has the ability to detect at least 2,000 permutations: *Provided further*, That all moneys

---

<sup>2</sup> 2024 Kan. Sess. Laws, Ch. 111.

<sup>3</sup> [http://kslegislature.gov/li/b2023\\_24/measures/sb387](http://kslegislature.gov/li/b2023_24/measures/sb387).

<sup>4</sup> 2024 Kan. Sess. Laws, Ch. 111.

<sup>5</sup> 2024 Kan. Sess. Laws, Ch. 111, § 23; Kan. Reg., Vol. 43, Issue 22 (May 30, 2024).

<sup>6</sup> 2024 Kan. Sess. Laws, Ch. 111; Kan. Reg., Vol. 43, Issue 22 (May 30, 2024).

expended for school safety and security grants for fiscal year 2025 shall be matched by the receiving school district on a \$1-for-\$1 basis from other moneys of the school district that may be used for such purpose: *And provided further*, That, notwithstanding the provisions of K.S.A. 75-3739, and amendments thereto, or any other statute, not less than 30 days following the effective date of this act, the above agency shall publish a list of entities that provide firearm detection software that meets the requirements of paragraph (3).

In short, the proviso places limitations on the \$5 million appropriation by requiring the money to be spent for the purchase and maintenance of automated external defibrillators, the purchase and installation of school security cameras that have firearm detection capabilities, and detailed specifications on what firearm detection software must utilized with the security cameras.

Your question requires an analysis of the Governor's line-item veto power. Article 2, Section 14(b) of the Kansas Constitution grants the Governor the authority in limited instances to veto less than an entire legislative enactment. This constitutional provision states in relevant part:

If any bill presented to the governor contains several items of appropriation of money, one or more of such items may be disapproved by the governor while the other portion of the bill is approved by the governor.

The Kansas Supreme Court has explained that “[t]he veto power of the executive under our system of government is not inherent in such officer as a legislative function, but is a power confided in him by the supreme authority of the state; and in exercising this function, while he is not confined to rules of strict construction, he nevertheless must look to the Constitution for the authority to exercise such power.”<sup>7</sup> In *State ex rel. Stephan v. Carlin*, the Court defined the term “items of appropriation of money” as used in Article 2, Section 14(b) to mean “the designation of specific sums of money which the legislature authorizes may be spent for specific purposes.”<sup>8</sup> The Court explained:

Some common examples of “items of appropriation of money” are these. There is appropriated (for a named agency) from the state general fund: for salaries and wages, \$500,000; for operating expenditures, \$200,000; for the purchase of a site (at a stated location for a certain

---

<sup>7</sup> *State v. French*, 133 Kan. 579, 300 P. 1082, 1084 (1931).

<sup>8</sup> *State ex rel. Stephan v. Carlin*, 230 Kan. 252, 256, 631 P.2d 668 (1981).

purpose) \$15,000; and for a certain purpose from a certain fund, no limit (the authorized sum being the amount in the described fund).<sup>9</sup>

This suggests the Supreme Court has adopted a narrow interpretation of the line-item veto authority and that any provision which does something more or different than designate a sum of money to be spent on a specific purpose is not an “item of appropriation of money” subject to veto.<sup>10</sup>

However, subsequent opinions of our predecessors have rejected this interpretation. After examining caselaw from other jurisdictions, and viewing the line-item veto authority through the lens of its three purposes: (1) the rejection of legislative logrolling; (2) the imposition of fiscal restraint upon the legislature; and (3) the strengthening of the Governor’s role in the formation of the budget,<sup>11</sup> our predecessors have concluded that the term “item of appropriation of money” should be more broadly construed and requires a fact specific case-by-case analysis to balance the legislative and executive constitutional powers, ultimately concluding “that if a provision can be lawfully included in an appropriation bill and is indeed a separable item not closely linked to a single appropriation, then it is subject to a line item veto.”<sup>12</sup>

Consistent with this thinking, Attorney General Stovall opined that the Governor properly exercised his line-item veto authority granted by the Kansas Constitution by vetoing a proviso contained in 2002 Senate Bill 517 which was intended to prohibit the expenditure of state money to reinforce the State Capitol building dome in preparation for placement of the Ad Astra sculpture atop the dome.<sup>13</sup> Later, Attorney General Schmidt opined that, from a constitutional perspective, because a lapse of an appropriation is the same as an appropriation itself, the budget proviso contained in Section 175 of 2011 Senate Substitute for House Bill 2014, which directed the manner in which a \$5.9 million lapse in appropriation was to be implemented, was properly line-item vetoed.<sup>14</sup> General Schmidt concluded that the line-item veto was proper because the legislative intent of reducing expenditures by \$5.9 million was kept intact and because the prominent role of the Governor in the

---

<sup>9</sup> *Id.*

<sup>10</sup> Atty. Gen. Op. 2002-47.

<sup>11</sup> Atty. Gen. Op. 2012-1.

<sup>12</sup> *Id.*; see also *Washington State Legislature v. Lowry*, 931 P.2d 885, 889-90 (Wash. 1997) (any budget proviso with a fiscal purpose contained in an omnibus appropriations bill is item of appropriation subject to line-item veto); *Karcher v. Kean*, 409 A.2d 403, 406 (N.J. 1984) (general conditions or limitations on expenditures of monies found in appropriations act can be discrete subject of gubernatorial line-item veto).

<sup>13</sup> Atty. Gen. Op. 2002-47.

<sup>14</sup> Atty. Gen. Op. 2012-1.

budget process had been preserved by eliminating the restrictions on the Governor's authority as to how to reduce such funding.<sup>15</sup>

However, the expansive view of the Governor's line-item veto power taken by our predecessors comes with an important caveat—that a proviso cannot be “closely linked” to a single appropriation in order to be subject to an item veto.<sup>16</sup> Attorney General Stovall, in her earlier opinion,<sup>17</sup> discussed the Missouri Supreme Court's opinion in *State ex rel. Carson v. Bond*,<sup>18</sup> in which the court held a line-item veto to be improper where the veto concerned only the limitations on the money but not the specific appropriation itself. The court held the veto had the effect of increasing a generic appropriation by eliminating the restrictions on the use of that money.<sup>19</sup> Thus, the line-item veto constituted an improper rewriting of the law.<sup>20</sup>

Attorney General Stovall also discussed a similar opinion by the Louisiana Supreme Court in *Henry v. Edwards*,<sup>21</sup> in which the court emphasized that inherent in the power to appropriate is the power to specify how such money is to be spent, concluding that any qualifications added to specific items of appropriations may not be vetoed by the Governor without vetoing the item of appropriation to which the qualification modifies.<sup>22</sup> “[B]y striking these provisions but allowing the money ‘item’ of expenditure to stand, the Governor would be able to alter and thus, in fact, to legislate by creating a new ‘item’ of appropriation wholly different in nature and purpose from that originated in the legislature.”<sup>23</sup> The Court held it could not “sanction a result so clearly violative of the constitutional prerogative of the legislature.”<sup>24</sup>

In contrast to the line-item vetoes of provisos approved previously, provisos which prescribed or directed the expenditure of funds in a lump sum appropriations bill,<sup>25</sup> here, Governor Kelly line-item vetoed a proviso closely linked to the \$5 million school safety and security grants contained in Section 2(a) of 2024 House Substitute for Senate Bill 387. A portion of Section 2(a) provided for \$5 million in school safety and security grants and the related proviso placed restrictions on such grants. The

---

<sup>15</sup> *Id.*

<sup>16</sup> Atty. Gen. Op. 2002-47.

<sup>17</sup> *Id.*

<sup>18</sup> *State ex rel. Carson v. Bond*, 495 S.W.2d 385, 390-92 (Mo. 1973).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Henry v. Edwards*, 346 So. 2d 153, 157 (La. 1977); Atty. Gen. Op. 2002-47.

<sup>22</sup> *Id.*; see also *Jubelirer v. Rendell*, 953 A.2d 514, 517 (Pa. 2008); *Karcher*, 462 A.2d at 1287.

<sup>23</sup> *Henry*, 346 So. 2d at 157.

<sup>24</sup> *Id.*

<sup>25</sup> “[S]o long as the Legislature drafts budget bills as lump sum appropriations to agencies conditioned by provisos . . . the Governor's appropriations item veto power extends to such proviso.” *Lowry*, 931 P.3d at 893.

Rep. Williams  
Sen. Erickson  
Page 6

proviso does not apply to the appropriations bill as a whole. The Governor's veto of the proviso alone without also vetoing the specific appropriation exceeded the Governor's line-item veto power contained in Article 2, Section 14(b) of the Kansas Constitution and amounted to an unlawful rewriting of the law by turning a specific appropriation with specific limitations into a general appropriation.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach  
Attorney General

/s/ Anthony J. Powell

Anthony J. Powell  
Solicitor General