



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: House Committee on Appropriations
From: Luke Martland, Director and Chief Counsel
CC: Michael O'Grady, Deputy Director; Jen Carbee, Legislative Counsel;
Rebecca Wasserman, Legislative Council; BetsyAnn Wrask, Legislative
Counsel
Date: June 15, 2018
Subject: Appropriating money to fund government operations

I. Introduction

This memorandum will address the question of whether an act of legislation is required to appropriate funds in order to continue government operations after July 1. This memorandum also provides options for keeping State government operating in light of the Governor's veto of H.13.

II. Does the law require that an act of legislation appropriate funds to continue government operations after July 1?

Yes. Government operations can only be funded by an act of legislation, passed by both bodies of the General Assembly and presented to and approved by the Governor, or approved pursuant to a veto override.

Pursuant to the Vermont Constitution, "[n]o money shall be drawn out of the Treasury, unless first appropriated by act of legislation." Vt. Const. Chap. II, § 27. Based on State and federal precedent, "act of legislation" should be read as indicating a bill that was passed by the General Assembly and presented to, and approved by, the Governor.

The supreme legislative power is vested in the General Assembly. Vt. Const. Chap. II, § 2. Under the so-called "bicameral" or "enactment" clause, every "bill, resolution, or other thing, which shall have been passed by" one house must be adopted by the other house. Vt. Const. Chap. II, § 6. Likewise, the "presentment" clause requires that "[e]very bill which shall have passed the Senate and House of Representatives shall, before it becomes a law, be presented to the Governor." Vt. Const. Chap. II, § 11.

The Vermont Supreme Court interpreted Chapter II, § 27 of the Vermont Constitution in Kellogg v. Page, 44 Vt. 356 (1871). In 1870, the Vermont General Assembly passed a

resolution authorizing the State Treasurer to pay certain bonds. In Kellogg, the Court faced the question of whether this resolution, which had not been presented to, or signed by, the Governor, qualified as an “act of legislation” under Chapter II, § 27 of the Vermont Constitution. The Court indicated that “[t]here would seem no ground for claiming that this joint resolution of the two houses has the character of a *legal enactment*. The governor, under the constitution of this State, is a co-ordinate branch of the government, and a necessary party to all ‘*acts of legislation.*’ ” 44 Vt. at 361–62 (italics in original). The Kellogg Court’s analysis is buttressed by an opinion of the Vermont Attorney General that “a bill is necessary when permanent direction and control of matters are to be taken,” and that a resolution is appropriate “when the legislature merely desires to express an opinion.” 1964-1966 Op. Att. Gen. 20.

In INS v. Chadha, 462 U.S. 919, 952 (1983), the Supreme Court of the United States discussed the importance of the bicameral and presentment clauses in the U.S. Constitution and what actions are “essentially legislative in purpose and effect.” An action that has “the purpose and effect of altering the legal rights, duties and relations of persons ... outside the legislative branch” is legislative and therefore requires passage by both houses of Congress and presentment to the President. Similarly, an action that “supplants” a decision that normally could only be made through a bill passed by Congress and approved by the President, or that implements policy determinations that are normally made through a bill, is legislative in nature and therefore subject to the bicameral and presentment clauses. Id., at 952-53.

In conclusion, the appropriations process necessitates drawing money from the State Treasury; pursuant to the Vermont Constitution, this can only be done by an act of legislation. Based on the constitutional provisions, as well as the case law summarized above, any legislation appropriating funds must be in the form of a bill passed by the General Assembly and presented to and approved by the Governor, or pursuant to an override of a veto. As a result, the General Assembly can only fund the continued operations of State government through a bill, and cannot do so through a continuing resolution.¹

III. What are the General Assembly’s options to keep State government operating?

If the Governor’s veto of H.13 is not overridden, the General Assembly may choose to pass another appropriations bill for all of fiscal year 2019. The General Assembly may also choose to pass a stopgap funding bill that appropriates sufficient funds to keep all State government functioning for a limited period of time, such as one month. Based on

¹ In this memorandum I have used “bill” or “act of legislation” to indicate a bill that was passed by both bodies of the General Assembly, presented to the Governor, and approved by the Governor. If, for argument’s sake, another term were used, for example “continuing resolution” and that continuing resolution were passed by both bodies, presented to the Governor, and signed by the Governor, it also would be a valid act of legislation. Indeed, a completely new term could be used, and as long as the constitutional requirements were met that would also be a valid act of legislation.

our research, there is precedent for this approach.² The General Assembly may also choose to pass a stopgap funding bill that appropriates funds to support only certain functions of State government for either a limited period of time (such as a month) or for the whole fiscal year.

IV. Conclusion

Pursuant to the Vermont Constitution, only a bill, passed by both bodies of the General Assembly and approved by the Governor, can be used to fund government operations after July 1, whether for all of the upcoming fiscal year or for a more limited period.

² In 1961, Governor Keyser and the General Assembly were unable to agree on a budget for the next fiscal year. As a result, the General Assembly passed, and the Governor signed, 1961 Acts and Resolves No. 193, which appropriated \$5,000,000.00 (approximately one-twelfth of the budget for the full fiscal year) for the general expenses of the State for the month of July. A similar bill was passed for the month of August, and soon thereafter the impasse was resolved, and a budget for the remainder of the fiscal year was adopted.