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Statutes--Modern Budget Amendment--Item Veto

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Rules of Civil Procedure, his opinion stated attorneys cannot, by their own agreement, attempt to circumvent the application of the Rules.

**Statutes—Modern Budget
Amendment—Item Veto**

During its 1970 regular session the West Virginia legislature passed a bill establishing the state budget for fiscal year 1970-71. The bill was presented to Governor Arch A. Moore, Jr., for his approval. On the face of the bill the governor reduced the appropriations for certain accounts by drawing a line through the amounts provided and inserting lower amounts. He then added his initials—"A.A.M., Jr." There were no other notations on the bill and the interlinations made by the governor were the only indications that changes had been made. The bill was then filed in the office of the Secretary of State.

The attorney general, Chauncey H. Browning, Jr., instituted an original proceeding in mandamus to require C. A. Blankenship, clerk of the House of Delegates, to publish the budget bill as passed by the legislature, excluding the reductions made by the governor. The attorney general contended that the reductions made by the governor did not comply with the mandatory procedure for vetoes set forth in the modern budget amendment to the West Virginia Constitution W. VA. CONST. art. VI, § 51. *Held*, writ granted. The act of the governor in crossing out the items on the bill indicated that he disapproved of them in their original form, but mere disapproval does not constitute an objection that would satisfy the requirements of the modern budget amendment. In order to comply with the amendment, reasons must be given for the exercise of an item veto. *State ex rel. Browning v. Blankenship*, 175 S.E.2d 172 (W. Va. 1970).

The governor contended that his actions in amending the budget bill did substantially, though not literally, comply with the provisions of the modern budget amendment. In support of his position the governor cited three West Virginia cases which held that substantial compliance with a constitutional provision requiring publication of proposed constitutional amendments was sufficient. *May v. Topping*, 65 W. Va. 656, 64 S.E. 848 (1909); *Capita v. Topping*, 65 W. Va. 587, 64 S.E. 845 (1909). The court distinguished those cases from the factual situation existing in *State ex rel.*

Browning. Early West Virginia cases established the principle that constitutional provisions dealing with the executive power of veto were not intended to be merely directory. Consequently the modern budget amendment, dealing with the executive veto, had to be afforded full and literal compliance.

The holding of the court in *State ex rel. Browning* voided the actions of the governor and sustained the Legislature's apportionment of funds for the fiscal year 1970-71.

Taxation—"Retail Dealer" And "Sale of Gasoline" Defined

A partnership leased certain heavy equipment which was used in operating its coal mines. The lessors of the equipment had the right to supply their own gasoline for the equipment, but under certain circumstances, the partnership would furnish gasoline purchased from a distributor. The actual cost of the supplied gasoline was deducted by the partnership from the gross amount owed the lessor.

The state tax commissioner issued an assessment against the partnership for the amount of gasoline supplied the lessor. The assessment was based on a decision by the tax commissioner that the partnership was a "retail dealer" and that the arrangement between the partnership and the lessor constituted a "sale" within the meaning of W. VA. CODE chapter 11, article 14, section 1 (Michie 1966). On appeal the decision of the tax commissioner was reversed by the circuit court. From that judgment the tax commissioner was granted an appeal to the West Virginia Supreme Court of Appeals.

The sole issue before the court was whether the partnership was a "retail dealer" engaged in selling gasoline and was taxable as such in accordance with W. VA. CODE chapter 11, article 14, section 1 (Michie 1966). The Code contains the following definitions:

The term 'retail dealer' shall mean and include any person not a distributor who sells gasoline in this state to consumer only.

The term 'sale' shall include any exchange, gift, or other disposition, and 'purchase' shall include any acquisition of ownership.