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GUBERNATORIAL VETO IN NORTH DAKOTA

by

Charles D. Whiting

B. A. in Social Science and Physical Education

Luther College, 1947

A Thesis

Submitted to the Faculty

of the

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for the Degree of

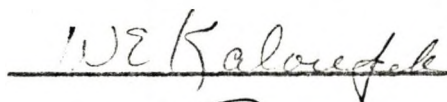
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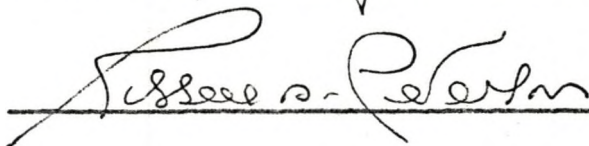
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ABSTRACT

This study attempts to determine the extent that Dakota territorial and North Dakota State governors have exercised the gubernatorial veto. The approach is historical. The development of the gubernatorial veto is outlined, the state constitutional provisions concerning it are presented, and individual performances by governors are indicated. A more detailed account of the veto exercised by the current Governor, William L. Guy, is given.

Dakota Territory was created with the governor having an absolute veto over acts of the legislature. Later Congress granted the legislature the power to override a veto. Ten territorial governors used the veto and a number of vetoes were overridden by the legislatures. The item veto was denied to territorial governors.

When North Dakota became a State the governor was granted the full veto and an item veto over appropriation bills, subject to legislative overriding by a two-thirds roll call vote. Neither veto applied to initiated or referred measures. Later the governor was granted veto power over the State Industrial Commission.

Evidence indicates that 523 vetoes have been issued by North Dakota governors. Only nineteen have been overridden by legislative action. One veto was sustained by court action. The veto has not been abused by any governor. A large number of vetoes have been in the public interest.

It is recommended that governors be granted more time to

study legislation, reduce items in appropriation bills, and be elected with the lieutenant governor as a team. Annual sessions of the legislature are also advocated.

INTRODUCTION

One of the most widely discussed weapons in the legislative arsenal of North Dakota governors has been the executive veto. This weapon has been available to the governors of the Dakota Territory as well as the State of North Dakota.

This study is an attempt to determine to what extent the Dakota territorial and North Dakota State governors have exercised the gubernatorial veto. The approach is historical, that is, it traces the development of the veto power of Dakota Territory and North Dakota State governors.

Research in North Dakota politics is a great experience especially on the gubernatorial veto. Because there has been so little done on the governor's veto power, the researcher has an advantage of plowing a virgin terrain of inquiry. On the other hand, there are handicaps to obtaining accurate information. A number of original documents pertaining to the veto were destroyed in the North Dakota Capitol building fire. The early Legislative Assembly law books do not record the number of vetoes or the reasons for the vetoes. The early session journals of the House and Senate are not consistent in the information on the veto. The newspaper sources also contain a number of discrepancies and omissions. What is recorded in this paper is information taken from available sources, determined to be the most accurate by this researcher.

CHAPTER I

THE GUBERNATORIAL VETO IN THE DAKOTA TERRITORY

The term "veto" has been traced to ancient Rome, where the tribune of the plebs had the power to annul or suspend the acts of other public authorities. The term "veto" (I forbid) was used by the tribune to cancel any command of a consul which infringed upon the liberties of a citizen. This power was gradually extended to other administrative acts and even to decrees of the Roman Senate.

The veto power of American governors is derived from the legislative power of the British Crown. In Britain the king's approval was necessary for a bill to be enacted and without this approval a bill was not a law.¹

When the English Colonies were established in America, the approval or disapproval of legislation by the governor or proprietor was found, to some degree, in two of the three types of colonies. In the charter colonies, the elected governors did not have the power to disapprove acts of the legislatures. In the proprietary colonies, the proprietor exercised the power of disapproval; and in his absence this power was delegated to his deputy. In the royal colonies, which were the most numerous, the appointed governors had an absolute veto over the acts of the legislature. Even if the governor of the colony

¹John A. Fairlie, "The Veto Power of the State Governor," American Political Science Review, XI (August, 1917), p. 473.

approved the acts of the assembly, the king might later disallow them because of his final veto over acts of the colonial legislature. Some acts of the assemblies required the approval of the king in council.²

Both the colonial governors and the British government used the power of disapproving colonial laws. This led to a great deal of discontent among the colonial people. In New York, of the bills passed in the colonial period, eight were disapproved by the governor and sixteen were disallowed by the Crown. The disallowance of laws by the king in council was mentioned first of the grievancies listed in the Declaration of Independence.

This distrust and opposition to the governor and to the royal veto appeared in the early state constitutions. These state constitutions restricted the powers of the governor and invested in the legislature almost absolute power. Only three of the thirteen original states made any provision in their state constitutions for a veto of acts of the legislature. South Carolina was the first to give the governor veto power with its temporary constitution of 1776. It gave the governor an absolute veto over acts of the legislature, but two years later it revised its constitution and omitted the veto power entirely. The other two states, New York and Massachusetts, each provided for a modified and qualified negative on legislation.

Under the New York Constitution of 1777, a provision for a council of revision, made up of the governor, the chancellor and the judge of the supreme court, was created. All bills passed by the

²Ibid., p. 474. See E. B. Greene: *The Provincial Governor*, pp. 6, 13, 14, 162-165, for detail on colonial government veto power.

legislature were sent to this council. The council had ten days in which they could return any bill with their objections in writing to the legislature. But if each house passed by a two-thirds vote of all the members of each house a returned bill, such a bill became law. Bills not returned within ten days or the adjournment of the legislature prevented return, became law at the beginning of the next session.³ Thomas Jefferson, in his plan of government for Virginia in 1783, proposed a council of revision similar to New York.⁴

In the Massachusetts State Constitution of 1780, the veto power of the governor was in limited form. All bills and resolves were submitted to the governor for his approval or disapproval. The bills and resolves disapproved by the governor were to be returned to the legislature within five days along with the governor's objections. This legislation could be reconsidered and repassed by a two-thirds vote of the members of each house of the legislature.⁵

The growing distrust of unchecked legislative supremacy was first reflected in the Federal Convention of 1787.⁶ The people who controlled the convention preferred the executive veto as established in Massachusetts to the mixed form of New York. The action of the Federal Convention greatly influenced the subsequent action of the states.⁷ The President of the United States was vested with a

³Ibid., p. 475.

⁴Arthur N. Holcombe, State Government of the United States (New York: Macmillan Co., 1931), p. 58.

⁵Fairlie, p. 475.

⁶Holcombe, p. 115.

⁷Ibid., p. 116.

qualified negative on legislation similar, in the main, to the power of the governor of Massachusetts. This was undoubtedly a factor in the gradual extension of the veto power of the state governors.⁸

It was a very slow extension. Between 1793 and 1812, no state conferred the power of veto on the governor.⁹ This condition was brought about by the rising tide of democracy in the states.¹⁰

Another factor contributing to the slow development was the rise of the Jeffersonian Republicans in opposition to the centralized policy of the Federalists.¹¹

Since 1812 the distrust of the governors veto has diminished so that every new state admitted to the Union, except West Virginia, has provided for some type of gubernatorial veto power over legislative bills.¹² The general adoption of the veto in the new states may be due in part to the fact that Congress gave the territorial governors this power over measures of the territorial legislatures.¹³

Since the Civil War the governors veto has been extended to all but one state of the Union. North Carolina is the only state which fails to give the governor the veto power.¹⁴

The veto power of the territorial governors was established

⁸Fairlie, pp. 475-476.

⁹Ibid., p. 476.

¹⁰Holcombe, p. 116.

¹¹Fairlie, p. 476.

¹²Frank W. Prescott, "The Executive Veto In American States," Western Political Quarterly, III (March, 1950), p. 98.

¹³Fairlie, p. 477.

¹⁴Book of the States 1964-65, Vol. XV (Chicago: The Council of State Government, 1964), pp. 58-59.

by the Ordinance of 1787 which, in fact, gave them an absolute negative over the laws passed by the territorial legislatures.

Section 11 of the Ordinance of 1787 states:

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives.

The governor, legislative council and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.¹⁵

There were some people who wanted part of the governor's power changed to allow him the veto, but not the power to dissolve the legislature.¹⁶ By the time that the territory of Dakota was created by Congress on March 2, 1861,¹⁷ the veto power of territorial governors was still absolute, but the governors no longer had the power to dissolve the territorial legislative assemblies. The governor could veto acts of the legislature, but the legislature could not override the governor's veto. When the legislature adjourned, bills vetoed by the governor could not become law. All bills not signed by the governor at adjournment could also not

¹⁵William MacDonald, Select Documents Illustrative of the History of the United States 1776-1861 (New York: Macmillan Co., 1897), p. 25.

¹⁶Debates of Congress 1789-1856 (New York: D. Appelton and Co., 1857), pp. 42-46.

¹⁷David W. Parker, Calendar of Papers in Washington Archives Relating to the Territories of the United States (to 1873) (Washington: Published by the Carnegie Institution of Washington, 1911), pp. 54-55.

become law. That is to say, the territorial governors had an absolute veto as well as a pocket veto.¹⁸

When President Lincoln signed Senate Bill 562, "An Act to Provide a Temporary Government for the Territory of Dakota and to Create the Office of Surveyor - General Therein," the veto power of the Dakota Territory governor was established in Section 2 of the act.¹⁹ The act reads:

That the executive power and authority in and over said Territory of Dakota, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect; he may grant pardons for offences against the law of said territory, and reprieves for offences against the laws of the United States until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.²⁰

During the second session of the 36th Congress, 1860, Representative Galuzha Grow of Pennsylvania, a member of the House Committee on Territories, recommended a change in the law organizing territories. His recommendation would have allowed the territorial legislatures to overrule the governor's veto by a majority of the legislature.²¹ But his suggestion was not enacted into law at this

¹⁸Prescott, The Executive Veto in American States, p. 105.

¹⁹Congressional Globe, 2nd Session, 36th Congress, Part 2, 1860-61, p. 1362.

²⁰Territory of Dakota, Session Laws, 1862, p. 22.

²¹Congressional Globe, 2nd Session, 36th Congress, Part 1, 1860-61, p. 81.

time and the Territory of Dakota was admitted with the governor of the territory having an absolute veto.

From the first session of the Dakota Territorial Legislature through the eighteenth session, the governors of the territory used the message veto as well as the pocket veto. Colonel Clement A.

Lounsberry reported in his North Dakota History and People:

This first session of the Legislative Assembly was rather exciting, and at sometime the relations between the legislative and the executive departments were considerably strained over the governor's determination to prevent the issue of any bonded indebtedness by counties or municipal corporations, unless the same had been approved by a vote of the people, the governor deeming this precaution necessary to keep down an incipient spirit of wildness, tending to repudiation. The records of the territory show that the governor withheld his signature to nearly or quite one-third of the acts passed by the Legislative Assembly.²²

The first territorial governor of Dakota was William Jayne from Illinois, who not only exercised the veto power but some other power as well. Edna LaMoore Waldo relates that:

William Jayne, played a lone hand, wielding the big stick with his veto power and where that did not suffice, resorting to fisticuffs on downtown streets as did the best of his colleagues.²³

Jayne, who was the founder of the Dakota Republican Party,²⁴ at the time of the Second Legislature had absolute power under the Organic Act to veto any bill, and there was no appeal.²⁵

²²Clement A. Lounsberry, North Dakota History and People Outlines of American History (Chicago: The S. J. Clarke Publishing Co., 1917), p. 372.

²³Edna LaMoore Waldo, Dakota An Informal Study of Territorial Days Gleaned From Contemporary Newspapers (Bismarck: Capitol Publishing Co., 1932), p. 247.

²⁴Howard Roberts Lamar, Dakota Territory, 1861-1869: A Study of Frontier Politics (New Haven: Yale University Press, 1956), p. 69.

²⁵George W. Kingsbury, Dakota Territory, Vol. I (Chicago: The S. J. Clarke Publishing Co., 1915), p. 262.

Governor Jayne ran into political opposition, over his use of the veto, at the People's Union Territorial Convention in 1862. A part of the party platform contained a plank on the use of the veto:

That the present unlimited veto power of the governor strips the Legislature of its free expression of the will of the people, and we therefore favor amending the Organic Act by Congress, so as to confer upon the governor only the usual two-thirds veto power; and to give to the people, through their Legislature, control of the public printing.²⁶

On January 3, 1863, the second session of the Legislative Assembly of the Dakota Territory approved a message to the United States Congress asking for a change in the act granting a temporary government for the Territory of Dakota. The Legislative Assembly desired Congress to change the unlimited veto power of the governor by allowing the legislature the power to pass laws by the usual two-thirds majority.²⁷

Relief from the absolute veto of the Dakota Territorial governor came on March 2, 1863. The Congress approved an amendment to the Organic Act by amending Section Two to read:

That every bill which shall have passed the Legislative Assembly shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large on 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 votes 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 three days

²⁶Ibid., p. 223.

²⁷Territory of Dakota, Session Laws, 1863, p. 272.

(Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he has signed it, unless the Assembly, by adjournment, prevent its return, in which case it shall not be a law.²⁸

Under the amended law the governor still retained the message veto as well as the pocket veto, but the legislature could now override the governor's veto during the legislative session.

The law passed by Congress that allowed the territorial legislature of Dakota Territory to override the governor's veto was included in the bill to provide a temporary government for the Territory of Colorado.²⁹ This law corresponded to the law of the Territory of Kansas.³⁰

On June 20, 1874, the United States Congress revised the veto power of the governor of the territory by clarifying when the legislature adjourned and changed some of the wording in the section dealing with the veto power. The principal changes, found in Section 1842 of the revised statutes of the United States of 1874, required the names of the members of the legislature voting for or against overriding of the governor's veto to be entered in the journals of each house. Also, the words "sine die" were added in the sentence pertaining to the legislature adjourning and preventing a bill from being returned by the governor to the legislature.³¹

The ten men who served as governors of the Dakota Territory all

²⁸Territory of Dakota, Session Laws, 1867, pp. XLII-XLIII.

²⁹Congressional Globe Appendix, 37th Congress, 3rd Session, 1863, p. 200.

³⁰Congressional Globe Appendix, 33rd Congress, 1st Session, v 23, 1853-54, p. 2229.

³¹Territory of Dakota, Session Laws, 1885, pp. IV-V.

had the veto power and there are indications that all of them, with the possible exception of Governor Arthur Millette, exercised this power with various degrees of intensity. Likewise, after Congress had granted the territorial legislature the power to override the governor's veto, the legislature used this power which created some conflict between the executive and the legislative branches of government.

A part of this conflict between the executives and the legislatures was due to the appointment of outsiders to the office of governor. Of the first four governors appointed, only Governor Newton Edmunds was an old resident of the territory to be named.³² Of the eleven men appointed to the governorship of the Dakota Territory, only three were considered as residents of Dakota, and two of the three were the last two governors of the territorial government.³³

One other condition that contributed to the effectiveness of the legislatures resistance to appointive officers was the legal limits placed upon their numbers. The small number of members allowed in each house of the legislature enabled the legislators to work together harmoniously to override the governor's vetoes. The Bismarck Tribune of February 25, 1881, complained:

The members of both houses seem to have combined against the executive, . . . but when Dakota becomes a state and the membership of the legislature is enlarged, vetoes will begin to be considered as they deserve.³⁴

³²Waldo, p. 256.

³³Earl S. Pomeroy, The Territories and the United States (Philadelphia: University of Pennsylvania Press, 1947), pp. 127-128.

³⁴Ibid., p. 101.

Not one of the first fifteen Legislative Assemblies had a total membership in both houses larger than thirty-nine members. The largest number of members the Council had, until the sixteenth session of 1885, was thirteen, and the greatest number of members in the House of Representatives, for the same period of time, was twenty-six.³⁵ However, even increasing the Council to twenty-four and the House to forty-eight, as Congress provided in 1884, did not reduce the number of legislature overrides of governor's vetoes or the attempts to override.

At the time of the Bismarck Tribune's complaint, the fourteenth legislature of 1881 had overridden twelve of the governor's vetoes.³⁶ In 1885 there was one veto overridden by the legislature.³⁷ The following session in 1887 found the Assembly overriding two of the governor's vetoes.³⁸ The eighteenth and final session of the legislature in 1889 overrode twenty vetoes of Governor Lewis K. Church.³⁹ For the legislative sessions from 1881 through 1889, there were a total of 925 general, special and private laws that passed both houses of the legislature.⁴⁰ The executive did not sign eighty-seven of these bills when presented to him, during the session, and these bills

³⁵Frank H. Hagerty, Territory of Dakota (Aberdeen: Daily News Print, 1819), pp. 13-22.

³⁶Territory of Dakota, Session Laws, 1881.

³⁷Territory of Dakota, Session Laws, 1885, pp. 26-27.

³⁸Territory of Dakota, Session Laws, 1887.

³⁹Territory of Dakota, Session Laws, 1889.

⁴⁰Hagerty, pp. 13-22.

became law. For the same time period, the Legislative Assembly overrode thirty-five of the executive vetoes.⁴¹

The subject material of the governor's vetoes in the Dakota Territorial period covers a number of topics. Governors Jayne and Edmunds vetoed bills granting divorces to specific women in the territory. Until 1866 the legislature granted individual divorces by passing individual bills. Governor Edmunds vetoed all divorce bills sent to him.⁴² It was the Governor's belief that the granting of divorces should be the function of the territorial courts, not the legislature.⁴³ In 1866 Congress amended the Organic law of all the territories. This was done to prohibit the pernicious legislation which had characterized the enactments of some of the territorial legislatures.⁴⁴ A part of this amended law prohibited the legislatures from granting divorces, leaving that authority to the courts of the territories.⁴⁵ This action had been recommended by Governor Edmunds in his veto messages of the divorce bills.⁴⁶

Governor John L. Pennington had an unusual experience over his use of the veto. Pennington vetoed a bond bill for grasshopper relief only to have the legislature override the veto. The legislature, after overriding the veto, made no attempt to set the law into

⁴¹Compiled from the Session Laws of the 14th, 15th, 16th, 17th and 18th Legislative Assemblies of the Territory of Dakota.

⁴²Kingsbury, p. 459.

⁴³Ibid., p. 428.

⁴⁴Ibid., p. 459.

⁴⁵Ibid.

⁴⁶Ibid., p. 428.

operation. The Governor then appealed to the citizens for help to provide money for grasshopper relief. Pennington admitted that he had erred in his estimate of the misfortune.⁴⁷

Pennington was also placed in a situation that some later governors of the State of North Dakota would be also placed in. This situation occurs when legislation is sent to the governor for approval or disapproval at the end of the session and he doesn't have the time to fully read all the bills placed before him. Pennington failed to veto a bill that he did not have time to read except by title and the title was misleading as to the contents of the bill. When it was discovered what the law would do, the Governor went to Washington and talked with the territorial delegate asking his help. Delegate Kidder was able to convince the Congress to rule out the objectionable part of the law.⁴⁸

Governor Nehemiah G. Ordway lost a veto to the legislature's two-thirds majority when he vetoed a bill for extra pay for the judge of the First Judicial District. The Governor had the weight of an opinion by the United States Attorney-General on his side, but the Attorney-General did not base his opinion on the illegality of the bill, only that it was not desirable. The fourteenth legislature of the Dakota Territory had many good lawyers and the bill was passed over Ordway's veto, regardless of the United States Attorney-General's opinion.⁴⁹ Ordway was also thought to be using his veto message to

⁴⁷Ibid., pp. 846-847.

⁴⁸Ibid., pp. 836-840.

⁴⁹Kingsbury, Vol. II, pp. 1172-1173.

strengthen himself in Washington rather than secure the favor of the territorial legislature.⁵⁰

Governor Gilbert A. Pierce ran into opposition of a number of factions over his use of the veto. Pierce vetoed a bill giving women above the age of twenty-one the right to vote. The legislature failed to override his veto, partly because of his reasons for vetoing the bill. The Governor found enough defects in the framing of the bill to condemn it and he was of the opinion that the law would delay claim to statehood. Pierce also doubted that women wanted the franchise or that the sentiment of the territory favored it.⁵¹ Pierce didn't escape the indignation of some women over his veto of this bill. Pierce was denounced by Kate Stoneman of Albany. She sent a request to President Cleveland that Pierce be summarily removed from office.⁵² Cleveland didn't follow her request to remove Pierce, as Pierce continued in office until he resigned in 1887.

Pierce also vetoed a bill to change the name of the town of Ordway to Independence. One historian stated that the Governor had apparently come to the conclusion that it was the duty of governors to stand by one another.⁵³ A bill to move the capitol from Bismarck to Pierre was also vetoed by Pierce.⁵⁴

Governor Louis K. Church ran into political opposition from

⁵⁰Ibid., p. 1173.

⁵¹Ibid., p. 1401. Text of veto message, see p. 1402.

⁵²Waldo, p. 292.

⁵³Kingsbury, p. 1397.

⁵⁴Ibid., see veto message p. 1397.

two political parties over his use of the veto. At the Republican Territorial Convention, to elect delegates to the Republican National Convention, held at Jamestown in May 1888, an address to the people of the United States was presented for approval. In this address the Governor's use of the veto was attacked:

He has wielded his executive club over the Legislature by threatening to veto certain bills, and promising to approve bills with jobs in them.⁵⁵

Not only did the Republicans attack Democratic Governor Church but his own political party also attacked him. At the territorial Democratic Convention at Watertown in May 1889, there was a great deal of anti-Church feeling. This feeling went so far as to call for Church's impeachment.⁵⁶ A part of the statement calling for Church's impeachment, as presented by Mr. Brierly of Grand Forks County, is almost identical with the Republican statement. Mr. Brierly states in part:

He has wielded his executive club over the Legislature, threatening with his veto measures that did not conform to his ideas of propriety, and promising his approval on bills with jobs in them for his special friends as well as himself.⁵⁷

Governor Church was not impeached nor did the threats or political warfare hinder his veto. The Bismarck Tribune of March 10, 1889, criticizes the lavish use of the veto by Church to prevent forty-three more laws from taking effect.⁵⁸

⁵⁵Ibid., p. 1517.

⁵⁶Ibid., p. 1521 for statement on impeachment.

⁵⁷Ibid.

⁵⁸Lamar, p. 278.

Governor Church's attitude and his method on the use of the veto was described by Senator Thomas J. Walsh in a letter. Walsh wrote:

Church is not a name to conjure with in this neighborhood or in any other. Nine members of the council besought him to sign the bill or return it with his reasons but he coolly dropped it into the waste basket and told them he had no time to write veto messages. He assumed a most dictatorial authority over legislation and never a Roman senate was more obsequious to emperor than that chosen from our remarkably independent people to their little Caesar.⁵⁹

Governor Church may have contributed to securing a new weapon in the veto power of the future governors of the State of North Dakota when he commented on the desirability of allowing the governor to veto items in bills. Church, in his messages to the Secretary of the Interior, expressed the desirability of allowing the governor to veto items in bills, a power the territorial governors of Dakota did not have. In Church's message to the Secretary in 1887, he stated:

It would have been well had the same act clothed the governors with power to veto items in the appropriation bills and thereby prevent the loading down of needful and proper bills of appropriation with what is often not only unnecessary but extravagant.⁶⁰

One year later, in his message to the Secretary of the Interior, he commented on the item veto:

The matter of providing for the maintenance of our various Territorial institutions and officers and general expenses of the Territorial government and the passage at times of excessive or unnecessary appropriations and the habit of tacking on proper appropriations unnecessary and expensive items, commonly

⁵⁹J. Leonard Bates (ed.), Tom Walsh in Dakota Territory, Personal Correspondence of Senator Thomas J. Walsh and Eleanor C. McClement (Urbana: University of Illinois Press, 1966), p. 119.

⁶⁰Report of the Governor of Dakota to the Secretary of the Interior 1887 (Washington: Government Press), p. 47.

called riders, suggests the propriety of the passage by Congress of such laws as would enable the governor to veto items of appropriations in bills, and approving such as are unobjectionable.⁶¹

Congress did not enact the legislation desired by Church, either for the territories or for the Federal Government. When North Dakota became a State, one year later, the item veto was included in the State Constitution as a part of the governor's veto power over legislation.

The gubernatorial veto power in the Dakota Territory was both weakened and strengthened because of its use or misuse by the governors. The actions of the territorial governors as well as the territorial legislatures, would certainly be remembered when statehood was planned by the founding fathers of North Dakota.

⁶¹Report of the Governor of Dakota to the Secretary of the Interior 1888 (Washington: Government Press), p. 55.

CHAPTER II

VETO AS EXERCISED BY NORTH DAKOTA GOVERNORS TO 1961

By the time North Dakota's Constitution was written, it was taken for granted that the governor should have the veto power. The Constitutional Convention did not lack for information when it created the North Dakota Constitution. Many of the state constitutions were represented. The delegates were all supplied with copies of the constitution of South Dakota, which had already been adopted by the popular vote of that proposed state.¹ The Committee on the Executive Department, which was responsible for developing the veto power of the governor, reported their recommendations to the convention. The committee's report in part was as follows:

Section 9. Every bill which shall have passed the Legislature, shall before it becomes a law, be presented to the Governor. If he approve, he shall sign, but if not he shall return it with his objections to the house in which it originated, which shall enter the objection at large upon the Journal and proceed to reconsider it. If after such reconsideration two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the Journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislature shall by its

¹Kingsbury, p. 1927.

adjournment present its return, in which case it shall be filed with his objections in the office of the Secretary of State, within fifteen days after such adjournment, or become a law.

Section 10. The Governor shall have the power to disapprove on any item or items or part or parts of any bill making appropriations of money or property embracing distinct items and part or parts of the bill approved shall be law, and the item or items and part or parts disapproved shall be void, unless enacted in the following manner: If the Legislature be in session he shall transmit to the house in which the bill originated a copy of the item or items or part or parts thereof disapproved, together with his objection thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.²

Section nine would allow the governor time after adjournment of the legislature to consider bills. This was something that the territorial governors were not granted. One other change from the territorial governor's veto power, included in Section nine, was the removal of the pocket veto. If he did not sign the bills in the time allotted after adjournment, the bills became law. Under territorial government, all legislation ended at the time of final adjournment of the Legislative Assembly.

Section ten, if accepted by the convention, would create the item veto for the governor. This was the type of veto power that Territorial Governor Church had requested from the Congress. The wording of this proposal appears to be very clear as to what the governor can do with the item veto. But governors would interpret the meaning differently, as will be noted later.

The Committee of the Whole recommended that Sections nine and

²Journal of the Constitutional Convention for North Dakota Tribune (Bismarck: State Printers and Binders, 1889), pp. 133-134.

ten be adopted by the convention.³ Very little debate was carried on in the convention over the veto power of the governor. Mr. Miller moved to strike out the word "present" and insert the word "elected" wherever it occurred in that section as used in that sense.⁴ This was adopted. This change in Section nine would make the veto a little more difficult to override than it was in the territorial government. Formerly, a two-thirds vote of the members present was necessary for the legislature to override a veto. The change would require a definite number of the elected membership of each house to pass over the governor's veto.

There was little additional change from the report of the Committee on the Executive Department and the article was adopted by the convention. There are four sections in the North Dakota Constitution containing provisions on the gubernatorial veto power. Section twenty-five denies the governor veto power over measures initiated by or referred to the electors. Section seventy-nine details the veto procedure and the manner of the legislature overriding the governor's veto. Section eighty contains the item veto power and the method for overriding this type of veto. Section eighty-one places limitations on certain actions of the governor. Included in this section is the possible punishment of a governor if he threatens a member of the legislature by the possible use of his veto power.⁵

³Ibid., p. 127.

⁴Ibid., p. 282.

⁵North Dakota, Constitution. See Appendix A for complete sections on governor veto power.

Since the adoption of the Executive Article in the North Dakota Constitution, in 1889, the original section on the governor's veto power has not been changed or altered by constitutional amendment. The last attempt to change the veto power of the governor occurred in 1966. A proposed constitutional amendment to allow the governor to reduce items in appropriation bills was defeated by the voters by 69,116 to 84,131 votes.⁶ Governor William Langer, during his terms as chief executive, did reduce or pare items in appropriation bills. No legal action was taken to challenge his reduction of various items and the reductions remained in effect.

North Dakota has been classified as a state having a strong executive veto. This classification is because of allowing the governor ten or more days for consideration of bills after adjournment, requiring two-thirds of the elected members to override a veto, and allowing the governor to veto items in appropriation bills.⁷ In North Dakota every bill passed by both houses of the Legislative Assembly must be presented to the governor for his approval or rejection. If during the session the governor disapproves a bill, he is constitutionally obligated to return it to the house where it originated accompanied by a veto message stating his objections. If the legislature is not in session, the governor must file the veto with the Secretary of State. A veto during the session may be overridden by a two-thirds vote of the elected members of each house. During the legislative session the governor has three days, not

⁶North Dakota, Session Laws, 1967, p. 1226.

⁷For the entire criteria for judging the relative strength of the veto in each state, see Prescott, p. 100.

counting Sundays, in which to act on the bill. After adjournment of the Legislative Assembly the period for consideration is extended to fifteen days Sundays being counted. In either case, if the governor does not sign or veto the bill, it becomes a law as though the governor had signed it. Unlike the President of the United States, the governor of North Dakota does not possess the pocket veto.⁸

North Dakota governors do not have the veto power over all forms of legislation. The state constitution prohibits the exercise of the veto over any initiative or referendum measures.⁹

The governor of North Dakota also has the veto power over actions of the State Industrial Commission. This power was given him by the legislature in 1919. House Bill 17 was an act to create the State Industrial Commission and the veto power was included in the act.¹⁰ This law was referred to the voters on June 26, 1919, for their approval or rejection. The voters gave their approval to House Bill 17 by a vote of 61,188 yes as opposed to 50,271 no votes.¹¹ The wording of the governor's veto power, in the bill, seemingly indicated that the governor had an absolute veto over the actions of the Commission.

⁸The procedure for overriding a veto in North Dakota is similar in one respect to the national practice. The North Dakota Constitution requires the house of origin to reconsider the governor's veto as does the national government.

⁹North Dakota, Session Laws, 1919, pp. 503-504. In 1918 North Dakota adopted, by Constitutional Amendment, the initiative and referendum. The veto power of the Governor was not extended to the measures initiated by or referred to the Electors.

¹⁰Ibid., pp. 215-218.

¹¹Ibid., p. 509.

In 1928, a North Dakota State Supreme Court ruling was rendered which limited the governor's veto power over the Industrial Commission. This action was the result of a court case brought by the Secretary of the Industrial Commission for his salary of the month of July, 1927.

During the legislative sessions of 1927, the governor had vetoed an item in the appropriation bill for the Industrial Commission. The item vetoed out was the salary of the Secretary, \$5,600.¹² Secretary Gammon brought suit to recover his salary. The case eventually reached the State Supreme Court and the Court reached its decision in the case State ex rel. Gammon, Secretary of State Industrial Commission, v. Sorlie et al., State Auditing Board, on April 9, 1928.

The court ruled that the governor did not have the absolute veto power to disallow all bills for administrative expenses of the Commission.¹³ The court also ruled that the governor was not given the power to disallow the ordinary bills of the Industrial Commission incurred in the regular and usual conduct of its affairs.¹⁴ According to the Supreme Court, the governor did not have an absolute veto over the Industrial Commission.

During the twenty-third session of the legislature, 1933, Senate Bill 195 was passed into law. This law amended, re-enacted and construed the previous laws relating to the State Industrial Commission.

¹²North Western Reporter, Vol. 219 (St. Paul: West Publishing Co., 1928), p. 106.

¹³Ibid., p. 105.

¹⁴Ibid., p. 110.

Part of the law established an absolute veto, for the governor, over actions of the Commission. Under the law, not even the courts could question the governor's power. Section 368a4 reads in part:

All orders, rules, regulations, by-laws and written contracts, adopted or authorized by the Commission shall, before becoming effective, be approved by the Governor, as Chairman, and shall not be in force unless approved and signed by him. In the creation of the Industrial Commission, it was the intention of the Legislature, and it is the intention of this Legislature, that the Governor shall have full veto power and that any Act vetoed, or not approved and signed, by him, shall be null and void and of no effect. Any decision of any court to the contrary, notwithstanding.¹⁵

The fortieth session of the State Legislative Assembly found the House twice trying to remove the veto power over the Commission. On the first attempt the failure of the constitutional majority resulted in the bill being indefinitely postponed.¹⁶ A week later the House considered House Bill 799 and passed the bill by a vote of seventy to twenty-two, six members not voting, and sent it to the Senate.¹⁷ The Senate acted on the advice of the Committee, to which the bill had been referred, and indefinitely postponed action.¹⁸ There being no further Senate action on this bill, the bill did not become law.

The extent of the use of the gubernatorial veto by the governors of North Dakota is shown in Table 1 on the following page. The total figure of 523 vetoes includes all types of vetoes as exercised by the governors of North Dakota. The total includes the

¹⁵North Dakota, Session Laws, 1933, p. 299.

¹⁶House Journal, 1967, p. 507.

¹⁷Ibid., p. 676.

¹⁸Senate Journal, 1967, p. 828.

TABLE 1
INDIVIDUAL GUBERNATORIAL VETOES 1889-1967

Governor and His Political Party	Legislative Assembly No. of			Total Vetoed	No. of Vetoed Overridden
	Regular and Special Sessions	Full Vetoed	Item Vetoed		
John Miller, R	1	13	2	15	1
Andrew H. Burke, R	2	3	0	3	0
Eli C. D. Shortridge, D	1	17	1	18	0
Roger Allin, R	1	22	8	30	0
Frank A. Briggs, R	1	2	10	12	10
Joseph M. Devine, R	0	0	0	0	0
Frederick B. Fancher, R	1	0	0	0	0
Frank White, R	2	13	5	18	0
E. Y. Sarles, R	1	15	9	24 ^a	0
John Burke, D	3	32	18	50 ^a	0
L. B. Hanna, R	2	31	14	45	0
Lynn J. Frazier, R	5	20	11	31 ^b	0
R. A. Nestos, R.	1	11	18	29	0
A. G. Sorlie, R	3	24	2	26	0
Walter Maddock, R	0	0	0	0	0
George F. Schafer, R	2	16	2	18	0
William Langer, R	3	42	49	91	0
Ole H. Olson, R	0	0	0	0	0
Thos H. Moodie, D	0	0	0	0	0
Walter Welford, R	1	12	4	16	0
John Moses, D	4	18	2	20	0
Fred Aandahl, R	3	10	1	11	1
Norman Brunsdale, R	3	8	1	9	0
John E. Davis, R	2	4	0	4	0
William L. Guy, D	5	49	4	53	7
Total	47	362	161	523	19

^aVetoed a \$25 concurrent resolution. See footnote 44.

^bVetoed concurrent resolution. See footnote 45.

Sources: Regular and Special Session Laws 1890-1967.
House and Senate Journals 1889-1967.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

vetoed that were successful, those overridden by the legislature and vetoes that were recalled by the legislature and changed to meet the objections. Two concurrent resolutions, that were vetoed, are included in the totals.

Of the twenty-one governors that had the opportunity to veto bills passed by the Legislative Assemblies of North Dakota, only one governor didn't use this power to check the legislature. Governor Frederick B. Fancher, in the session of 1899, did not issue one veto message.¹⁹ There have been forty regular sessions of the North Dakota Legislative Assembly, and in only three sessions did the governors find it unnecessary to veto legislation. Besides Fancher, Governor Norman Brunsdale, in one session, and Governor John Davis, in one session, appeared to be in harmony with the legislature and did not use the veto power once. In the seven special sessions of the legislature, that have been called, the governor's veto has been used in three of the sessions.

As indicated in Table 1, Governor William L. Guy has exercised the greatest number of full vetoes of any governor, forty-nine. Governor William Langer used the item veto the greatest number of times, also forty-nine. The record holder for the total number of vetoes, full and item, is also Governor Langer. During his tenure in the governors' office, Langer vetoed ninety-one bills passed by the legislature.

Table 2 on the following page shows a breakdown of the vetoes in ten year periods. The greatest exercise of the veto power was in

¹⁹Governors Devine, Maddock, Olson and Moodie did not use the veto as there was no legislative session.

TABLE 2

NORTH DAKOTA GOVERNOR VETOES BY TEN YEAR PERIODS

Years	Vetoos During Session	Vetoos After Session	Vetoos Over- ridden	Total Vetoos
1889-1900	20	58	11	78
1901-1910	5	67	0	72
1911-1920	2	90	0	92
1921-1930	8	62	0	70
1931-1940	22	99	0	121
1941-1950	4	20	1	24
1951-1960	2	11	0	13
1961-1967	15	38	7	53
Totals	78	445	19	523

Sources: Regular and Special Session Laws 1890-1967.
House and Senate Journals 1889-1967.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

the years 1931-1940 when 121 vetoes were issued. It is significant to note in Table 2 the number of vetoes that were exercised after the legislature had adjourned as compared to the number of vetoes before adjournment. This factor had a great influence upon the number of vetoes that were overridden.

As Table 2 indicates, there have been more vetoes used after rather than during, the legislative sessions in North Dakota. This is due, in part, to the legislature submitting a great number of bills to the governor during the final three days of the sessions. By sending legislation to the governor in the last three days of the session, the legislature is almost unable to override a governor's veto. Since the governor has fifteen days after adjournment to veto

a bill, the legislature by sending so many measures to the executive in the final three days removes the opportunity to override a veto. One other reason for few vetoes issued before adjournment, has been the political party relationship between the executive branch and the legislative branch. Of the twenty-five men who have held the office of governor, only five have been Democrats.²⁰ Only once have the Democrats controlled one house of the legislature, that being in 1965 when the House of Representatives was controlled by the Democratic Party.²¹ It is significant to note that in this session of the legislature, Governor Guy exercised his veto power the fewest number of times.

The gubernatorial veto in North Dakota has not been in exclusive control of one political party. Both Democratic and Republican governors have exercised the gubernatorial veto to varying degrees. Table 3 on the following page breaks the veto into use by political party. The Republican governors have vetoed 382 bills as compared to 141 vetoes for the four Democratic governors. Table 3 also indicates the number of vetoes by party before and after adjournment. The Republicans also have had the most vetoes overridden. A total breakdown by party governors is found in Tables 4A and 4B on the following pages.

²⁰North Dakota, Blue Book, 1961, p. 130.

²¹Grand Forks Herald, January 1, 1967, p. 6.

TABLE 3

COMBINED DEMOCRAT AND REPUBLICAN GOVERNORS VETOES

	No. of Governors Exercising Veto	Before	After	Total	Overrode	No. of Sessions
Republicans	17	55	327	382	12	34
Democrats	4	23	118	141	7	13
Total	21	78	445	523	19	47

Sources: Regular and Special Session Laws 1890-1967.
House and Senate Journals 1889-1967.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

TABLE 4A

DEMOCRATIC GUBERNATORIAL VETOES

Democrats	Before	After	Total	Overrode	Regular and Special Sessions	Democrats Control House
Guy	15	38	53	7	5	1
Moses	2	18	20	0	4	0
Moodie	0	0	..
J. Burke	4	46	50	0	3	0
Shortridge	2	16	18	0	1	0
Total	23	118	141	7	13	1

Sources: Regular and Special Session Laws 1890-1967.
House and Senate Journals 1889-1967.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

TABLE 4B
 REPUBLICAN GUBERNATORIAL VETOES

Republicans	Before	After	Total	Overrode	Regular and Special Sessions	No. of Houses Controlled by Democrats
Miller	5	10	15	1	1	0
A. Burke	0	3	3	0	2	0
Allin	3	27	30	0	1	0
Briggs	10	2	12	10	1	0
Devine	0	0	0	0	0	0
Fancher	0	0	0	0	1	0
White	1	17	18	0	2	0
Sarles	0	24	24	0	1	0
Hanna	1	44	45	0	2	0
Frazier	1	30	31	0	5	0
Nestos	0	29	29	0	1	0
Sorlie	7	19	26	0	3	0
Maddock	0	..	0	0	0	0
Schafer	1	17	18	0	2	0
Langer	21	70	91	0	3	0
Olson	0	..	0	0	0	0
Welford	1	15	16	0	1	0
Aandahl	2	9	11	1	3	0
Brunsdale	1	8	9	0	3	0
Davis	1	3	4	0	2	0
Total	55	327	382	12	34	0

Sources: Regular and Special Session Laws 1890-1967.
 House and Senate Journals 1889-1967.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

The use of the gubernatorial veto in North Dakota has been successful in relation to the number of vetoes overridden by the two-thirds majority of the elective members of the North Dakota Legislature. As was previously stated, only four governors have experienced their vetoes being overruled by the legislature. Governor Miller was the first to have a veto overridden. His veto for the creation and

support of the Deaf and Dumb School was overruled.²² Governor Frank Briggs was the next governor to feel the sting of the legislature's action. Briggs vetoed ten appropriation bills and had the displeasure of having all ten bills overridden. In his message to the Senate, Briggs listed several reasons for his action. One of his complaints is today still a complaint of most governors who receive legislation late in the session. Briggs' message clearly shows the problem:

I regret the fact that these measures cannot receive my approval, but the reasons to me are so apparent that my duties seem plain.

If there is any legislation that should receive careful and painstaking consideration it is certainly that of providing for the maintenance of our public institutions. Ample time should be given committees to discuss and pass upon appropriation bills, and if this be true of committees it would appear that the executive ought to be accorded the courtesy of a reasonable time to consider these matters. In the present instance these bills come to the executive eight hours prior to the final adjournment of your honorable body. It certainly will not be contended that this is sufficient time to give to such important legislation.

The total amount appropriated in the bills herewith returned without my approval in my opinion is largely in excess of the expected revenue. Careful estimates have been made by the state auditor and state treasurer as to the probable income for the biennial period under the present laws, and to this has been added a liberal allowance for revenue contemplated under pending legislation. Yet, the fact remains that there will be insufficient funds to meet these appropriation bills. Assuming liabilities in excess of possible receipts is not a good business proposition, and I do not believe that a single member of your honorable body would consider it so were the same conditions applied to his own affairs.²³

The legislature didn't concur with Briggs' message and by their action overrode all ten appropriation vetoes.

Governor William Guy faced a similar problem in the 1967 session of the Fortieth Legislative Assembly. In Guy's veto of the

²²Senate Journal, 1889, p. 902. House Journal, 1889, p. 1421.

²³Senate Journal, 1897, pp. 618-619.

three-fourths percent sales tax increase, he states that the bill was conceived late in the session and, "delivered on my desk 41 hours later, wet, dripping and struggling."²⁴ Guy also experienced having his veto overridden by the legislature. In fact, of the ten vetoes of Governor Guy before adjournment seven were overridden.

The only other governor besides the aforementioned to have a veto overridden was Fred Aandahl in 1945. Aandahl vetoed a bill giving additional expense money to the legislators only to have the legislature override the veto the day after the Governor's message was read in both houses.²⁵

A good measure of the governor's influence is the relatively small number of gubernatorial vetoes that have been overridden. In all but four of the regular and special sessions of the North Dakota Legislature, the veto was absolute. This fact may be due to the constitutional limitations, to the legislature sending much of the legislation to the governor in the final days of the session and to the political relationship between the executive office and the two houses of the Legislative Assembly. The greatest number of full vetoes overridden occurred when the governor was a Democrat and the two houses of the legislature were overwhelmingly Republican controlled.

In most states, early governors used the veto sparingly to protect themselves from what they considered to be an unconstitutional encroachment on their authority by the legislature. It was also used to thwart what was thought to be unconstitutional legislative bills.²⁶

²⁴Grand Forks Herald, February 28, 1967, p. 1.

²⁵Grand Forks Herald, February 20, 1945, p. 1.

²⁶Morey, p. 34.

Governor John Miller, first Governor of North Dakota, vetoed five bills on the grounds the bills were unconstitutional.

Table 5 lists eight reasons for gubernatorial vetoes in North Dakota. The most common reason listed in the veto messages were in the interests of economy. The most common statement found is "appropriations exceed revenue." Most of the item vetoes fall into this category. The second reason for governors vetoing legislation was in the public interest or unsound public policy. Frank Prescott, in his nationwide study of reasons given by governors for using the veto, found this reason to be the most common.²⁷ Remove the item vetoes from the reasons given by North Dakota governors, for use of the veto, and Prescott's most common reason would also apply in North Dakota. In some of the veto messages, more than one reason for the veto was given by the governor. What is listed in Table 5 is what this researcher considered the major reason for the governor's vetoes.

Table 6 breaks down the reasons for vetoes by a ten year period. This chart indicates a desire for economy during the depression years.

The item veto originated in Georgia during the period of the Southern Confederacy.²⁸ Forty-one states provide for an executive veto of items in appropriation bills.²⁹ Originally the device was

²⁷Prescott, p. 109.

²⁸Morey, p. 41.

²⁹Book of the States 1964-65, pp. 58-59.

TABLE 5

GOVERNORS' REASONS FOR VETOING BILLS

Governor	Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7	Item 8	Total
Miller	2	3	5	1	0	0	0	4	15
A. Burke	0	1	1	1	0	0	0	..	3
Shortridge	2	1	4	2	0	5	0	4	18
Allin	10	3	2	8	0	1	0	6	30
Briggs	10	0	1	0	0	0	0	1	12
Fancher	0	0	0	0	0	0	0	0	0
White	9	2	0	0	1	1	0	5	18
Sarles	16	7	0	0	1	0	0	0	24
J. Burke	29	8	8	3	1	0	0	1	50
Hanna	28	9	1	0	1	0	5	1	45
Frazier	17	3	3	4	1	2	1	0	31
Nestos	23	4	0	1	0	0	1	0	29
Sorlie	7	11	1	0	7	0	0	0	26
Shafer	3	9	1	0	3	1	0	1	18
Welford	6	3	0	0	1	0	6	0	16
Langer	61	18	0	2	9	0	0	1	91
Moses	5	7	5	1	0	1	0	1	20
Aandahl	3	6	2	0	0	0	0	0	11
Brunsdale	2	2	1	1	2	0	0	1	9
Davis	1	3	0	0	0	0	0	0	4
Guy	10	35	1	0	4	2	1	0	53
Totals	244	135	36	24	31	13	14	26	523

Notes:

Item 1 refers to economy or tax burden.

Item 2 refers to public interest or unsound public policy.

Item 3 refers to unconstitutional or unlawful.

Item 4 refers to duplication or conflicts with present law.

Item 5 refers to unnecessary.

Item 6 refers to defective drafting, clarity or not properly certified.

Item 7 refers to poor law or present law best.

Item 8 refers to miscellaneous or reasons unknown.

The classification scheme for this table is based upon that used by Prescott, p. 109.

Sources: Governors' Messages from Journals of House and Senate.

Bismarck Tribune.

Fargo Argus.

Fargo Forum.

Fargo Forum and Daily Republican.

Grand Forks Herald.

TABLE 6

REASONS FOR VETOES BY TEN YEAR PERIODS

Years	Item 1	Item 2	Item 3	Item 4	Item 5	Item 6	Item 7	Item 8	Total
1889-1900	24	8	13	12	0	6	0	15	78
1901-1910	43	14	4	71	3	1	0	6	72
1911-1920	54	15	8	6	2	0	6	1	92
1921-1930	35	19	2	1	8	3	1	1	70
1931-1940	72	28	0	2	12	0	6	1	121
1941-1950	3	11	7	1	0	1	0	1	24
1951-1960	3	5	1	1	2	0	0	1	13
1961-1967	10	35	1	0	4	2	1	0	53
Totals	244	135	36	24	31	13	14	26	523

Notes:

Item 1 refers to the economy or tax burden.

Item 2 refers to the public interest or unsound public policy.

Item 3 refers to unconstitutional or unlawful.

Item 4 refers to duplication or conflicts with present law.

Item 5 refers to unnecessary.

Item 6 refers to defective drafting, clarity or not properly certified.

Item 7 refers to poor law or present law best.

Item 8 refers to miscellaneous or reasons unknown.

The classification scheme for this table is based upon that used by Prescott, p. 109.

Sources: Governors' Messages from Journals of House and Senate.
Bismarck Tribune.
Fargo Argus.
Fargo Forum.
Fargo Forum and Daily Republican.
Grand Forks Herald.

adopted to check improper or unconstitutional grants of money according to Prescott.³⁰

The item veto has been a part of the veto power of North Dakota

³⁰Prescott, p. 106.

governors since the state's beginning. Some of the governors have used the power sparingly or not at all, while others wielded the 'knife' to a great extent. "In itself," says Negley, "this did not constitute a major concession. . . .but significance lies in the fact that this provision provided the one additional power necessary to make the veto a potential 'stick' in the hands of any governor inclined to use it."³¹ Except for Governor Briggs, the item veto has been a potential 'stick' in the hands of North Dakota governors.

Table 7 on the following page shows the number of item vetoes by governors and the amount of appropriations itemed out of the bills. Note should be made of the amount of money removed from the appropriation bills by Governor Langer, as he pared or reduced the amounts of money as well as itemed out parts of the bill. Earlier governors had desired to do this, but did not think it was constitutional. Governor R. A. Nestos in explanation of an item veto said in part:

Unfortunately the executive is limited in his vetoes by the requirement that each item must either be disallowed in full or permitted to stand, even though considered excessive. This situation makes it doubly difficult to make reductions without injury to the institutions affected.³²

Governor Langer was of the opinion that he had the authority to reduce or pare items in appropriation bills and stated that he intended to use this power: to reduce state taxes to a point where the taxpayers could afford to pay the expense of operating the state government.³³ The Herald reported that Langer said the

³¹Glenn R. Negley, "The Executive Veto in Illinois," American Political Science Review, XXXIII (December, 1939), p. 1052.

³²Grand Forks Herald, March 11, 1923, p. 1.

³³Grand Forks Herald, March 12, 1933, p. 1.

TABLE 7
ITEM VETOES AND AMOUNT REMOVED

Governor	No. of Item Vetoes	Amount Cut or Reduced
Miller	2	\$ 8,700
Shortridge	1	5,000
Allin	8	121,340
Briggs	10	322,175 ^a
White	5	28,800
Sarles	9	120,266
J. Burke	18	128,625
Hanna	14	193,625
Frazier	11	801,563
Nestos	18	338,965
Sorlie	2	191,900
Schafer	2	102,000
Langer	49	685,728.69 ^b
Welford	4	38,840
Moses	2	10,700
Aandahl	1	2,500,000
Brunsdale	1	180,900
Guy	4	265,000
Totals	161	\$6,044,127.69

^aAll money restored by legislature overriding item vetoes.

^bLanger reduced or pared items in appropriation bills.

Sources: Regular and Special Session Laws 1890-1967.

House and Senate Journals 1889-1967.

Bismarck Tribune.

Fargo Argus.

Fargo Forum.

Fargo Forum and Daily Republican.

Grand Forks Herald.

Attorney-General had ruled that the governor had authority to reduce items in appropriation bills and veto single items in any bill.³⁴

The Attorney-General's ruling was not recorded in the newspaper story.

³⁴Ibid., March 19, 1933, p. 1.

The only ruling relating to the veto power, during this time period, was if the governor had the power to veto an emergency clause of a legislative act without vetoing the body of the act. In discussing the question it was taken for granted that the act in question was not an appropriation bill. The Attorney-General ruled the governor could not veto an emergency clause.³⁵

In 1935 P. O. Sathre, the new Attorney-General issued an opinion that governors could not 'scale down' items of appropriation measures. In the ruling Sathre was of the opinion:

That under Section 80 of our Constitution the Governor may veto in toto, any or all of the items of an appropriation bill, but he may not reduce or scale down or in any manner change, except by elimination of a whole item, any of the items of such appropriation.³⁶

Ten years later, after Langer's action, Governor John Moses said he was without power to pare items, but could veto entire items. Moses referred to Langer's action by relating that Langer had a friendly administration in all state departments and there was little chance that his action would be challenged in court; it was not challenged. Moses referred to his own administration by saying ". . .unfortunately the present governor does not have such friendly co-operation in all state departments and any such action on his part

³⁵Report of the Attorney General of North Dakota to the Governor July 1, 1932 to June 30, 1934. (Bismarck). pp. 143-144. This writer could not find a specific ruling that allowed the governor to reduce items in appropriation bills. The ruling stated in the text could be the ruling to which Langer referred. This ruling was made on March 9, 1933.

³⁶Report of the Attorney General of North Dakota to the Governor July 1, 1934 to June 30, 1936. (Bismarck). pp. 5-7.

would undoubtedly be challenged at the first opportunity. . .".³⁷

Governor Moses was a Democrat faced with a Republican controlled legislature and most of the executive offices also were filled with Republicans.

The States of Pennsylvania, California and Massachusetts have given the governor the power to reduce items in appropriation bills as well as reject them.³⁸ To allow North Dakota governors this additional power would require a constitutional amendment approved by the voters. One such attempt was made in 1966, but the amendment lost.

Of the 161 item vetoes, all but two have involved a sum of money. Governor Guy in 1967 vetoed two bills that would transfer funds between line items. No definite sum of money was involved or removed from the bills. No one has challenged these vetoes on the grounds of constitutionality. One person interviewed at the Capitol building was of the opinion that the vetoes were illegal. However, he pointed out that the only persons involved in the matter were appointees of Governor Guy. He ventured the opinion that he doubted that a challenge would be made.³⁹

The use of the veto by some governors has been their political undoing. Governor A. Burke's veto of a bill, by the farmers' alliance, helped to defeat his try for a second term.⁴⁰ Governor Allin's veto

³⁷Grand Forks Herald, March 21, 1943, p. 1.

³⁸Prescott, p. 108.

³⁹Personal interview with member of the Legislative Research Staff.

⁴⁰Lounsberry, Early History of North Dakota (Washington: Liberty Press, 1919), pp. 425-426.

of appropriation bills was the main factor that made Allin unavailable as a candidate for re-election.⁴¹

North Dakota governors when vetoing complete bills have usually given detailed explanations in their messages accompanying the veto to the legislature. While messages on item vetoes have usually been short, the standard statement usually has been "appropriations exceed the estimated income."

A question arises when studying some of the appropriation vetoes of Governor Langer in 1933. There are some discrepancies noticeable in the money figures in some of the bills. A good example is Senate Bill 46: An Appropriation for Capitol Building and Grounds. The legislature appropriated \$78,626.00 in this bill. In Langer's partial veto message, he approved \$69,050.00. Or in other words, he reduced the amount \$9,576.00. Further on in his message, the Governor listed each separate reduction in the bill. These reductions are listed below:

Maintenance reduced to \$50,000 from \$56,076.
 Improve and repairs reduced to \$2,500 from \$5,000.
 Trees, shrubs reduced to \$1,000 from \$3,000.⁴²

The total amount reduced in the three items listed above was \$10,576 or a \$1,000 difference between the Governor's statement as to how much he would allow and his itemized statement in the veto message. No explanation for this discrepancy or others found in similar appropriation bills could be found. The original Senate Bill 46 was

⁴¹Lewis F. Crawford, History of North Dakota, Vol. I (Chicago and New York: The American Historical Society, Inc., 1931), p. 384.

⁴²North Dakota, Session Laws, 1933, pp. 47-48.

studied by this writer in the Secretary of State's vault, and the wording is identical with the veto message found in the Session Laws of 1933.

There has been one major court decision relating to the gubernatorial veto in North Dakota. House Bill 410 was vetoed by Governor John Burke after the adjournment of the legislature. The veto was challenged on the grounds that the fifteen day period for vetoing after adjournment had elapsed. The petitioners were of the opinion that the bill was law because the Governor had not signed or vetoed the bill in the allotted time period.

In the court case North Dakota State ex rel. Watkins v Norton (1911) 21 N.D. 473, 131 N. W. 257, the Supreme Court of North Dakota ruled that Sundays were included in the fifteen day period. In the Court's opinion:

The Framers of the Constitution were dealing with two distinct periods of time having no similarity, and if they intended to exclude intervening Sundays as to the larger period of time fixed by them, it is reasonable to assume that they would have expressly so provided.⁴³

This is the only override of a governor's veto in North Dakota by any other method than the two-thirds vote of the legislature.

There is evidence that two governors of North Dakota used the veto power on concurrent resolutions passed by the two houses of the legislature. This is not possible at the present time. Governor John Burke vetoed a twenty-five dollar appropriation to the Lincoln Farm Association for the purchase, development and preservation of the

⁴³American Law Reports Annotated, Vol. 54 (Rochester: E. R. Andrews Printing Co., 1928), p. 341.

Lincoln farm in the State of Kentucky.⁴⁴ The other veto of a concurrent resolution was by Governor Frazier in 1917. The resolution would have provided for a special committee to investigate and report on legislation for relief of floods in the eastern part of the state. Frazier cited a state supreme court opinion of 1909 in his veto message on the construction of appropriations bills. Frazier gave a part of the court's opinion when he stated:

The general appropriation bill shall embrace nothing but appropriation for expense of the executive, legislative and judicial departments of the State, the interest on the public debt and for public schools. All other appropriations shall be made by special bills, each embracing but one subject.

Frazier's objection to the concurrent resolution was on the grounds the act was not constitutional. No definite amount of money was provided for the purpose contemplated by the act.⁴⁵

Governors of North Dakota have, at times, accomplished their aims by not actually vetoing the bill, but by threatening to veto the bill. It is almost impossible to determine the effects of a veto threat on the legislators, but the threat may exist in the minds of the legislators when they are determining legislation. Governor Miller, during the first session of the Legislative Assembly, threatened to veto a Louisiana lottery bill. The bill caused a great deal of controversy at the time and Miller's threatened veto aided in preventing it from becoming law. The Bismarck Settler said of Miller: "Let it be written on one of the brightest and cleanest

⁴⁴Grand Forks Herald, March 24, 1907, p. 1. For veto message see March 27, 1907, p. 8. For complete text of this concurrent resolution see Senate Journal, 1907, pp. 1060-1061.

⁴⁵House Journal, 1917, pp. 460-461. Fraizer later approved this resolution, p. 757.

pages of history that the first governor of the State of North Dakota was a man of such integrity that the gang of lottery agents and schemers counted in advance upon his veto."⁴⁶ Miller didn't have to veto the lottery bill because it failed to pass the Assembly.

One type of legislation that constantly received a threat of a gubernatorial veto was on appropriation bills. Governors at various times have announced that they would cut or scale down items unless the legislature presented him appropriation bills the governor considered economically sound. Governor Allin did this in 1895 when he threatened to veto appropriation bills, unless recalled and scaled down by the legislature.⁴⁷ The threat was not successful since Allin had to use the partial veto on appropriation bills.

A governor must use caution when he contemplates the threat of a veto or he may find himself in legal difficulty. Section 81 of the North Dakota Constitution states the general punishment for a governor who threatens use of the veto.⁴⁸ The specific punishment is found in the North Dakota Century Code 12-08-18.⁴⁹ Governor Langer was attacked by the presiding officer of the Senate, Lieutenant Governor T. H. H. Thoresen, for Langer's threat to veto appropriations. Thoresen in a message to the Senate on the threat said:

A message came into this body threatening this Senate that unless they did so and so that further appropriations

⁴⁶Grand Forks Herald, February 13, 1890, p. 2.

⁴⁷Grand Forks Herald, February 24, 1895, p. 1.

⁴⁸North Dakota Constitution, Article III, Section 81.

⁴⁹North Dakota Century Code, Vol. II (Indianapolis: The Allen Smith Co., 1960), p. 543. See Appendix B for specific punishment.

would be vetoed, in direct conflict with Section 81 of the Constitution of the State of North Dakota.⁵⁰

Thoresen accused Langer of using the veto as a club over the heads of Senators causing many Senators to vote against personal convictions on several bills in order to protect state institutions in their home communities which would suffer if appropriation bills were vetoed. The Herald records Thoresen as saying on this subject:

It is not true democracy to be forced to vote against your own convictions, it is not a government of and for the people if a legislator is not allowed to vote as his conscience dictates but must follow the demands of one who wants to be a dictator.⁵¹

Nothing happened to Langer because of his threatened veto, but the possibility of legal action against a governor still remains if someone should ever challenge the threat of a veto upon action of the legislature.

The governors of North Dakota have received praise as well as criticism for their use of the gubernatorial veto throughout the history of North Dakota. The veto of a bill might have an effect on certain people, industry or business. These groups may react, to the veto, in various ways. In the study of newspaper articles on the governor's veto, a great deal more criticism, rather than complimentary material, is found over the use of the veto. Beginning with the first governor, criticism has been levied against many governors for the use of the veto. It was contended that Governor Miller should be deprived of his veto power except passing upon the constitutionality of any measure. One critic thought that the

⁵⁰Senate Journal, 1937, p. 1607.

⁵¹Grand Forks Herald, March 11, 1937, p. 1.

legislature was better qualified than the Governor to decide what legislation was desirable because they were fresh from the people. The Herald, in an editorial remarked that the critic evidently forgot that the Governor and the legislature were elected the same day.⁵²

One veto of a Senate bill by Governor Miller resulted in the appointing of a Senate veto committee. The committee was to examine the reason assigned by the Governor for his veto and present their findings to the Senate. The Governor had listed several reasons for his veto in his message to the Senate based mainly on conflicts with rulings of the Supreme Court of Dakota Territory. The Senate veto committee reported that each reason given by the Governor was untenable and not supported by authorities cited nor by the principal invoked to maintain it.

The committee also reported that if the veto had been based on the ground that the proposed legislation was superfluous, there would have been some merit to the executive action. The committee also questioned why this illegal legislation had been permitted to remain unquestioned on the statute books for the past five years.

One interesting quotation was used by the committee in its report when the committee compared the present conditions to those faced by the mayor of the city welcoming Henry of Navarre. The mayor said:

I know it is the custom to greet renowned warriors like your Majesty with the thunder of cannon; but I have twenty-one reasons why we cannot comply with such custom:

1. We never had a cannon in this city;
2. We - -

⁵²Grand Forks Herald, March 11, 1890, p. 2.

Hold, said the King, your first is sufficient, we will dispense with the remaining twenty.⁵³

The committee stated it could assign numerous reasons for its action, but an all-sufficient and controlling one to its mind was that the proposed legislation was parallel, just and constitutional. In the opinion of the committee, the Governor's veto was not based upon either of the objections indicated, but upon erroneous application of the law.

The committee's report did not have an effect on the veto of Senate Bill 172. Governor Miller's veto remained in force.

Governor Allin was praised by the Herald for vetoing appropriation bills for other than political or popular reasons. The editorial states the Governor:

Doesn't care one iota for future political preferment or approval for political reasons. He has simply performed an act he thought best for the taxpayers of the State, and he is doubtless perfectly willing to shoulder the full responsibility.⁵⁴

Allin by shouldering his responsibility contributed in bringing his political life, as Governor, to an end. His own political party refused to nominate him for a second term of office.⁵⁵ The Governor also experienced a great deal of protest for his reductions of money to the state educational institutions.

Governor Briggs earned praise for his veto of a bill which would have violated all Republican party pledges concerning prohibition. The Herald editorial page comments on the veto of House Bill 209:

⁵³Senate Journal, 1889-90, pp. 831-32.

⁵⁴Grand Forks Herald, March 23, 1895, p. 2.

⁵⁵Lounsberry, p. 428.

The veto shows Briggs to be what the Republican party believed when they nominated him, and what the people believed when they elected him -- a loyal and independent capable man who could be depended upon to administer the affairs of state ably, economically, honorably, in accordance with the known wishes of the people and the Republican party.⁵⁶

Briggs' vetoes of appropriations were also praised, on the grounds he didn't have time to study them and by using his veto he had made good a campaign pledge. This pledge was to place responsibility for all evil consequences where it belonged - upon the legislature.

One method of handling appropriation bills was the method used by Governor White. In a story about White and his handling of legislation, the Bismarck Correspondent stated the Governor had been kind to bills and had signed all but appropriation bills "these he left to the tail end, as a kid leaves the good things to the last."⁵⁷

When asked what he would do with these bills, White replied:

I have set aside several of them for closer scrutiny. They have been 'found guilty,' but are not yet sentenced, which would indicate a good pruning in the near future, probably a day or two.⁵⁸

Governor White was attacked for vetoing a bill and signing other legislation. White vetoed two bills that would provide appropriations for a childrens home in Fargo and one in Bismarck on the grounds of economy. A headline in the Herald read, "Governor White Favored Thousands for Wolf Bounty But Not a Cent for Orphans."⁵⁹

The temure of Governor John Burke, the second Democrat elected

⁵⁶Grand Forks Herald, March 13, 1897, p. 2.

⁵⁷Bismarck Correspondent as cited in the Grand Forks Herald, March 18, 1903, p. 5.

⁵⁸Ibid.

⁵⁹Grand Forks Herald, March 16, 1903, p. 1.

governor, received criticism over the use of the veto. The Fargo Forum and Daily Republican attacked the Governor for his veto of the state penitentiary bill as being political. The writer thought that if the Governor had signed the bill, I. P. Bailey, a well known local Democrat, would lose his job as Treasurer of the Penitentiary. The Governor was also criticized for his appropriation vetoes, because he overlooked all measures relating to Devils Lake, his home town.⁶⁰ The farmers of North Dakota were told that Burke trimmed them by his veto and they were chided for electing him. The Forum told the farmer:

The action of the Governor shows the mistakes made by Republican farmers in going to another party for an executive who is antagonistic to their interest. . . Look over the list and see where the farmers got Burke's knife right in the neck.⁶¹

Whether the farmers took notice of this complaint is not known, but the fact remains, Burke was re-elected in 1911 to a third term of office, the first Democrat or Republican to receive this honor.

The influence of others upon a governor to exercise his veto was attacked during Governor Frazier's administration. A number of Frazier's vetoes were denounced as being inspired by the work of Arthur C. Townley. The North Dakota Society of Equity denounced as a Townley veto Senate Bill 84 which the society had worked for.⁶² Townley's influence was referred to in the Herald when it reported on the Governor's actions. The Herald said the bill was not vetoed

⁶⁰Fargo Forum and Daily Republican, March 22, 1909, p. 7.

⁶¹Ibid., p. 1.

⁶²Grand Forks Herald, March 8, 1917, p. 5.

by the Governor but that the veto had been written and put in type in the office of the Non-Partisan Leader days before Governor Frazier had affixed his name to the document. The hand of the Governor when he affixed his signature was guided by the hand of Townley.⁶³

A veto of a reapportionment bill in 1923 gave Governor Nestos a favorable commendation from some newspaper editors and political opponents. The Herald remarked that the Governor had risen above the narrow lines of partisan politics and has acted with a high regard of the laws of the entire state and not merely of the faction which elected him to office.⁶⁴

Support for one of Nestos' vetoes came from a man the veto would hurt. V. L. Mangum, the President of the Forestry School, approved the veto which caused the discontinuance of that school. President Mangum said the veto was for the good of the state as the school did not fulfill local needs or command solid support from Bottineau County.⁶⁵ It is questionable if this type of support would be forthcoming for a gubernatorial veto today.

At times legislators complained about the governor's use of the veto or the language in the message accompanying the veto. In Governor Sorlie's veto of House Bill 83, the Governor charged that the bill was sponsored by the insurance lobby. Representative Traynor took exception to the Governor's language in the veto message.

⁶³Ibid., March 17, 1917, p. 4.

⁶⁴Grand Forks Herald, March 14, 1923, p. 4.

⁶⁵Ibid., March 11, 1923, p. 3.

Traynor said he wasn't sponsored by a lobby of any kind but acted in the interests of his constituents.⁶⁶

A Langer veto of dairy funds received a retort from the Commissioner of Agriculture and Labor in 1933. Commissioner John Husby complained that the Dairy Commissioner would be reduced to a position of riding a swivel chair and giving nothing to the state because of lack of funds with which to operate. Husby threatened to close the office entirely and stated that what happened to the farmers was the Governor's responsibility "This veto eliminates all restriction on sanitation and is a blow to the health of the people."⁶⁷

The Governor was also praised for reducing public expenditure in accordance with the diminished revenues of the state. It does not appear that the method used to reduce items was an issue in 1933, only that the state should operate within its means.

During the legislative session of 1937, Langer was accused of using his veto power to gain control of the commissioners office of the Veterans Service Commission.⁶⁸ Lieutenant Governor Thoresen also attacked Langer for his vetoes of appropriations of two schools:

Surely if he was looking for something to veto, which he undoubtedly was, he could have found something else, something not so vital as our educational institutions. But something else would not have been dramatic enough for the chief executive of this state. That we have launched ourselves on a period of turmoil and upheaval appears certain.⁶⁹

This criticism came from a Republican executive official and was

⁶⁶Grand Forks Herald, March 3, 1927, p. 1.

⁶⁷Grand Forks Herald, March 27, 1933, pp. 1-2.

⁶⁸Grand Forks Herald, March 5, 1937, p. 10.

⁶⁹Ibid., March 9, 1937, p. 2.

directed to another Republican executive officer. At this time in North Dakota politics, the Republicans were split among themselves giving way to many fights between the Republicans rather than between the two political parties. This is one factor in explaining the number of vetoes registered by Governor Langer.

From the years 1949 through 1959, there was little criticism of gubernatorial vetoes. During this period the executive and the legislative departments were controlled by the same political party, producing some degree of harmony. In two of the six legislative sessions, no vetoes were recorded and for the same time period, only one appropriation bill was cut, that being Senate Bill 1 of 1953.

Table 8 on the following page gives a nineteen year comparison on the extent of the gubernatorial veto in North Dakota and South Dakota. The chart indicates that the two states compared quite closely in use of the veto. The veto procedure is similar in the two states except for two provisions. The governor of South Dakota has ten days after adjournment to act on legislation and for the legislature to override a veto requires a two-thirds vote of the members present in each house. South Dakota has also adopted annual sessions of the legislature which has allowed the governor a greater opportunity to veto legislation during the time period indicated on Table 8.

TABLE 8

COMPARISON OF GOVERNORS USE OF VETO IN NORTH DAKOTA AND SOUTH DAKOTA

Legislative Session	No. of Bills Vetoed	
	South Dakota	North Dakota
1949	5	5
1951	4	5
1953	4	4
1955	0	0
1957	3	0
1959	13	4
1961	17	9
1963	5	16
1964	6	..
1965	5	7
1966	2	..
1967	6	21
Total	70	71

Sources: South Dakota Staff Memorandum Disposition of Bills and Resolutions and Gubernatorial Vetoes of Bills, 1966 and 1967 South Dakota Legislature, State Legislative Research Council (Pierre, South Dakota).

North Dakota Session Laws of the Legislative Assembly, 1949-1967.

Table 9 on the following pages indicates the action of the Legislative Assemblies since the beginning of statehood for North Dakota.

TABLE 9

VOLUME OF LEGISLATION AND VETOES, 1889-1967

Year	No. of Bills, Resolutions Introduced	No. of Bills Passed or Became Law	No. of Bills Signed Before Adjournment	No. of Vetoed	Vetoed Before Adjournment
1889	597	219	109	15	5
1891	457	134	67	3	0
1892	7	7	0	0	0
1893	349	137	29	18	2
1895	337	140	41	30	3
1897	411	151	50	12	10
1899	398	175	65	0	0
1901	458	215	69	5	0
1903	525	210	41	13	1
1905	528	192	60	24	0
1907	686	273	86	10 ^a	2
1909	734	230	27	20	2
1911	821	302	136	20	0
1913	892	279	71	43	1
1915	831	264	145	2	0
1917	769	233	17	18 ^b	0
1918	118	15	11	1	0
1919	414	230	97	8	1
1919	118	68	11	0	0
1921	420	142	25	4	0
1923	713	353	168	29	0
1925	593	223	127	4	1
1927	623	287	148	22	6
1928	15	1	0	0	0
1929	461	258	187	11	1
1931	665	213	67	7	0
1933	686	269	87	52	0
1935	694	283	113	16	1
1937	634	242	20	37	21
1937	8	6	0	2	0
1939	680	253	52	7	0
1941	554	304	85	5	1
1943	463	270	70	7	1
1944	50	35	1	1	0
1945	498	335	62	3	2
1947	627	373	102	3	0
1949	591	355	114	5	0
1951	561	344	158	5	1
1953	623	353	132	4	0
1955	612	355	177	0	0
1957	634	392	128	0	0
1959	658	431	86	4	1

TABLE 9--Continued

Year	No. of Bills, Resolutions Introduced	No. of Bills Passed or Became Law	No. of Bills Signed Before Adjournment	No. of Vetoes	Vetoes Before Adjournment
1961	747	391	153	9	0
1963	749	426	281	16	4
1965	813	458	278	7	1
1965	17	8	0	0	0
1967	849	501	203	21	10
Total	24,685	11,335	4,156	523	78

^aVetoed a \$25 concurrent resolution.

^bVetoed concurrent resolution.

Sources: House and Senate Journal Indexs 1889-1967.
 North Dakota Session Laws 1889-1967.
 Grand Forks newspapers.
 Fargo newspapers.
Bismarck Tribune.
Fargo Argus.
Fargo Forum and Daily Republican.

CHAPTER III

GUBERNATORIAL VETO AS EXERCISED

BY WILLIAM L. GUY, 1961-1967

The use of the gubernatorial veto by Governor William L. Guy received a great deal of publicity during and after the Fortieth Session of the North Dakota Legislative Assembly. Statements to the effect that Guy had set a record for issuing gubernatorial vetoes were made in the news media. A large amount of the news coverage was devoted to the seven vetoes that were overridden by the legislature. The Herald reported that nobody around the legislature could remember when three or more vetoes had been overridden. The newspaper also stated that Guy had passed Langer's total of forty-one vetoes.¹ The publicity given to Governor Guy's use of the veto seems to indicate that he has established some type of record for the use of the veto power. Does Governor Guy hold the "record" for issuing gubernatorial vetoes in North Dakota? This question will be answered in this chapter. A study of Governor Guy's use of the veto power is also included in this chapter.

One record that Governor Guy can claim, without challenge, is in having served as Governor of North Dakota longer than any other person. When the Fortieth Legislative Assembly convened in January

¹Grand Forks Herald, March 1, 1967, p. 1.

1967, Guy was in his seventh year as Governor. The previous "record" of longevity in office for any one governor was six years.²

Another "record" Governor Guy could claim, without challenge also, is in having dealt with more regular sessions of the legislature than any previous governor of North Dakota. During Guy's tenure, four regular sessions of the Legislative Assembly have been held; the previous high for any governor was three. During these four regular sessions, Governor Guy has had the adversity of being the chief executive of the state and dealing with a legislature controlled by the opposition political party. Only once has Governor Guy been favored with one house of the legislature being controlled by his political party. Table 10 shows the political party alignment during the four regular legislative sessions that have met during Governor Guy's time in office.

TABLE 10

POLITICAL PARTY ALIGNMENT IN THE LEGISLATIVE ASSEMBLY, 1961-1967

Year	Senate		House	
	Democrats	Republicans	Democrats	Republicans
1961	21	28	41	72
1963	12	37	43	70
1965	20	29	65	44
1967	5	44	15	83

Source: Grand Forks Herald.

Faced with this political opposition during most of his tenure, one would expect a governor to exercise his veto power more

²Grand Forks Herald, January 1, 1967, p. 6.

frequently than when the two branches are controlled by the same political party. The extent of Governor Guy's use of the veto power is indicated in Table 11.

TABLE 11
VETOES OF GOVERNOR WILLIAM GUY, 1961-1967

Year	Full Vetoes	Item Vetoes	Total No. Vetoes	Amount Itemed Out	Vetoes Before Adjournment	No. Vetoes Overridden
1961	8	1	9	\$125,000	0	0
1963	15	1	16	140,000	4	0
1965	5	2	7	..	1	0
1967	21	0	21	..	10	7
Totals	49	4	53	\$265,000	15	7

Source: North Dakota Session Laws, 1961-1967.

As Tables 10 and 11 indicate, in the two sessions of the legislature that Governor Guy exercised his veto power the greatest number of times, 1963 and 1967, the Republicans had nearly a two-thirds majority in each house. Even with this large political advantage, the Republicans didn't override any of Guy's vetoes until the 1967 legislative session.

One factor for the overrides in 1967 and not in 1963, was that the legislature sent bills to the Governor well in advance of adjournment. By this action, the legislature forced the Governor to act on the legislation presented to him. North Dakota law requires the Governor to sign or veto bills within three days if presented to him prior to the last three days of the legislative session. If Governor Guy had failed to act on the legislation presented to him

early in the session, the bills would have become law automatically. Governor Guy objected to ten bills, of which seven were later passed by legislative override and the other three bills were lost in the Senate.³

In the year that Governor Guy exercised his veto power the least number of times, 1965, the Democrats controlled one house of the Legislative Assembly. This unique situation, in North Dakota political history, found the Governor vetoing five bills introduced in the Republican controlled Senate and only two bills introduced in the Democratic controlled House. Only one veto was issued before adjournment, that being a Senate bill. The chance that this veto would be overridden, in lieu of the political division between the two houses, was unthinkable.

Statements that Governor Guy holds a "record" compared to other North Dakota governors over the use of the gubernatorial veto can be challenged. Most of these assertions are general and not specific. The type of veto issued by the governor as well as what is included in the totals assigned to the various governors are not clarified.

The statement that Governor Guy holds the record for vetoes issued in one legislative session can be challenged. Guy's twenty-one full vetoes in 1967 do not surpass the twenty-nine full vetoes of L. B. Hanna in 1913 or William Langer's twenty-five in 1933. Even if one adds the item veto into the total number of vetoes, issued during one session, Guy would not have the record. Governor Langer's

³Senate Journal, 1967.

fifty-two vetoes in 1933 and Governor Hanna's forty-three in 1913 surpass Guy's total. Governor Guy's total, for a single session, would still be twenty-one.

As to the assertion that Governor Guy issued more vetoes than any other North Dakota governor, a clarification is necessary. If the claim is that Guy issued more vetoes than any other governor, it wouldn't be true. Governor Guy has issued a total of fifty-three full and item vetoes while in office. Comparing this with William Langer's use of the veto, one finds that Langer issued a total of ninety-one full and item vetoes while Governor of North Dakota - a record.

Governor Guy would be rightfully credited with the record if the acknowledgement was for issuing full vetoes during tenure in office. Forty-nine full vetoes have been issued by Governor Guy during his seven years in office. The nearest competitor, in this category, is Langer. During his three and one-half years in office, Governor Langer issued forty-two full vetoes.

Any statement that Governor Guy has issued more item vetoes than any other governor would be erroneous. Guy issued only two item vetoes in a single session while Governor Nestos issued eighteen item vetoes in 1923. If one considers Langer's pared or partial veto as an item veto, then Langer has the record for a single session, twenty-five vetoes in 1933. Governor Guy's total of four item vetoes during his tenure in office certainly would not be close to the record. Nestos and Langer would still retain this honor with the eighteen item vetoes of Nestos' and the forty-nine of Langer's version of the item veto.

A statement that Guy had more vetoes overridden than any other

governor must also be clarified. If the statement is based on full vetoes overridden by the legislature then the seven full vetoes overridden in 1967 would stand. But if this statement is based upon total number of vetoes overridden, then the record would fall to Governor Briggs whose ten item vetoes were overridden in 1897.

In a Herald interview, Governor Guy explained his interpretation of the veto procedure. Guy's veto procedure is similar to the procedure explained earlier. The Governor stated that when he vetoes a bill he is required to send it back to the chamber of origination listing his objections. Then the chamber is required to act on the original bill, not specifically on the Governor's objections. Guy commented that if it should happen that the legislators agree with his objections the only way to refine the bill was to introduce it anew through the delayed bills committee. Guy also pointed out that the Attorney-General has ruled that the governor's time limitations are calendar days, not legislative days. "They can even stop the clock if they want to, and it makes no difference on the Governor's time limits, according to an attorney general's ruling," said Guy.⁴

It was Governor Guy's opinion that this could lead to an awkward situation if a session should go overtime. The Governor has fifteen days to sign or veto a bill after the sixty calendar days of a regular legislative session. If the legislature stopped the clock and continued in session for five days, past the sixty calendar days, the Governor would only have ten days in which to act on legislation.⁵

⁴Grand Forks Herald, February 21, 1967, pp. 1, 7.

⁵Ibid.

If this situation did occur, it would seem an infringement upon the Governor's veto power. The Governor is allowed fifteen days to study the legislation and act upon it. To deny him the full fifteen days to act, because the legislature extended the time limit, is unfair. Under the Attorney-General's opinion, it could be possible for a legislature to extend the session by "covering the clock," for sixteen days and deny the Governor any time to consider the bills sent to him when the legislature finally did adjourn.

This type of situation has not occurred in North Dakota, and probably never will. There seems to be an unwritten agreement between the executive and the legislature that the fifteen day period applies from the time the Legislative Assembly actually adjourns, and not calendar days. One possible avenue open to a governor, if such a situation faced the governor, was proposed by Lloyd Omdahl. A member of Governor Guy's administrative staff, Omdahl, when questioned on what would happen if bills didn't get to the Governor's desk within the fifteen day period said, "We'd stop the clock in the governor's office."⁶

Whether this tactic would be successful or not, cannot be ascertained until it is tried. It seems only reasonable, that if the legislature can pass bills after the sixty calendar days allowed by the State Constitution, the Governor should be entitled to the full fifteen days after the legislature finally adjourns.

In the same Herald interview, Governor Guy gave his opinion on the item veto power of the chief executive. Guy pointed out that

⁶Ibid., March 9, 1967, p. 13.

under current law, he can veto lined items in appropriation items. He cannot reduce or increase but can only veto or pass on the items.⁷

This opinion, of the Governor's, seems to indicate that Guy believes that line items apply to more than just definite items of money in appropriation bills. His veto of items in Senate Appropriation Bills One and Two, in 1965, did not involve definite sums of money, but rather a transfer of funds between line items.⁸

The actual procedure of vetoing a bill was demonstrated by Governor Guy for two Carrington girls in the Capitol lunchroom. The Governor crossed out the section of the bill marked approved and placed the time and date of 10:45 a.m., February 25, on the space marked disapproved; then he signed the measure. The bill vetoed would have permitted farming by corporations in North Dakota.⁹

The procedure of handling bills presented to Governor Guy's office was explained by a member of the Governor's staff. After the bills are received in the Governor's office, they are taken to a large room adjoining the main office. The bills are placed upon a large table and sorted according to the departments involved. The various department members read and study the bills pertaining to their individual department. The bills are checked closely for terminology, spelling, punctuation and clarity of intent. If a bill is found to contain errors, it is returned to the enrolling and engrossing department for correction.

⁷Ibid., February 21, 1967, p. 7.

⁸North Dakota, Session Laws, 1965.

⁹Fargo Forum, February 26, 1967, A-6.

Bills that are judged correct and are favored will, in all probability, be signed by the Governor. The bills the Governor signs while the legislature is in session are returned to the house of origination along with the Governor's message stating that he has signed the bills.

The bills that are objectionable to the Governor, and he vetoes, will have an attached statement stating the reason or reasons for the veto. All the veto messages of Governor Guy have been written by the Governor. When the Governor vetoes a bill, during a legislative session, he returns it to the house of origination with his veto message. If the veto is performed after the legislature has adjourned, the veto and the message are filed with the Secretary of State within the fifteen day limit. If the Governor fails to sign or veto the legislation, it becomes law.¹⁰

Governors who exercise the veto power have found that problems exist in the veto process and Governor Guy is no exception. One problem that has appeared is in the receiving of bills in the Governor's office. What constitutes delivery of bills to the Governor is not clear. The State Constitution states that a bill to become a law must be presented to the Governor. One questions if this statement means that the bills must be delivered to the Governor personally, or would presenting the bills to his secretary in the Governor's office be the same thing? Normally there isn't any controversy over this matter, unless delivery occurs near the end of the legislative session.

¹⁰This procedure was explained by a member of Governor Guy's staff during a personal interview at the Capitol, July 18, 1967.

As it has been stated earlier in this study the Governor has three days to sign or disapprove a bill before adjournment. But the final three days of a legislative session are considered a part of the fifteen day period the Governor has after adjournment. Therefore, bills received by the Governor during the 58th, 59th and 60th day, if vetoed, are not required to be returned to the legislature with the Governor's objections.

During the 1961 Legislative Assembly a situation occurred that clearly shows the problem. Senator Elton W. Ringsak, Republican from Grafton, complained that Governor Guy's office would not accept eleven bills dispatched by a Senate messenger. The bills were taken to the Governor's office where the Governor's receptionist asked the messenger if the Senate had adjourned. The messenger replied "no." The receptionist said that she could not accept the bills for the Governor. Senator Ringsak's point, on this matter, was that if the Senate had adjourned it would have been in the 58th day of the session, and if the Senate had not adjourned it would still be the 57th day. According to Ringsak, bills received before the 58th day of the 60 day session are to be acted upon by the executive before the session ends, but those received by the Governor in the last three legislative days may be acted upon within the fifteen day period. Normally a legislative day ends at 2:00 p.m., but in this situation the legislature had not ended its 57th day until 10:45 p.m., Wednesday. Thus, Ringsak said:

Had the Governor taken the bills before the Senate had ended its 57th day, he would have been obligated to act on them before the session's end; but by refusing them then and not taking them until the 58th day, he will have 15 days in which to act. And by that time the legislature will be long gone.

Ringsak said he considered the action "a kid trick" on the part of the Governor.¹¹

This criticism was answered by the Governor's office. It was explained that the procedure of not accepting any more bills than could be checked and made ready for signing in the final three day period was not new but was similar to the procedure of prior administrations. Lloyd Omdahl said the Governor didn't know of the incident but that receptionist Mrs. Becky Zoller, by not accepting more bills than could be processed in the three day period, was following normal procedure.¹²

This explanation didn't satisfy Senator Ringsak. The Senator continued his attack by stating:

Since when, can or does a receptionist dictate the terms of the governor's office as to receiving or not receiving important bills of legislation which affect all of the people of North Dakota?¹³

This controversy was not settled nor the answer presented as to what constitutes receiving bills by the Governor during the 1961 legislative session.

During the 1967 legislative session, one of Governor Guy's staff received a telephone call from a member of the legislature. As it was late in the evening, the Governor's office was closed. The staff member was directed to come to the Capitol building and open the Governor's office to receive bills. The staff member did as he

¹¹Grand Forks Herald, March 2, 1961, p. 10.

¹²Ibid.

¹³Ibid., March 3, 1961, p. 3.

was directed and the bills were received in the Governor's office.¹⁴ Whether this manner of requiring acceptance of bills is proper or not is also unanswerable at this time.

There are other problems in the veto process, but one problem Governor Guy hasn't faced is bills lost, stolen or strayed. In 1889, an Australian ballot bill was stolen and the Governor couldn't sign it. In 1893, eight Senate and five House bills, that had passed both houses, failed to reach the Governor for his action. Somewhere between the legislative halls and the Governor's office these bills disappeared. In 1891 a bill was stolen and an asking price of \$2,000 was demanded for the bill's return.¹⁵ One doubts that any of these situations would appear today.

Under the present executive alignment in North Dakota where the Governor and the Lieutenant Governor are both elective offices, a possible problem could occur over the veto usage. Democratic Governor Guy has had a Republican Lieutenant Governor for two of his three terms and this study indicated that all was not harmony between the two offices. With this type of relationship, what would the Lieutenant Governor do with the veto power if the Governor was absent from the state or was unable to perform his duties. It would seem that the Lieutenant Governor acting as the Governor would have the veto power. As yet this situation has not occurred in North Dakota history. Normally during the sessions of the Legislative Assembly,

¹⁴This incident was related during a personal interview by this writer with two administrative assistants of Governor Guy on July 18, 1967, at the State Capitol building.

¹⁵Fargo Forum, March 6, 1893, p. 1.

the Governor is not absent from the state. But there are examples of where the Lieutenant Governor has signed bills in the absence of the Governor.

Governor Guy in attending the inauguration of President Kennedy in 1961 presented the Lieutenant Governor the opportunity to veto legislation. The Lieutenant Governor didn't take advantage of the opportunity but rather he criticized Guy for leaving the state for political publicity.¹⁶ The way the political line up has been in North Dakota, predominately Republican in the legislature and the executive branches, one doubts that a Lieutenant Governor will ever exercise the veto power, but the possibility still exists that it could happen, and it would add another page to the colorful pages of North Dakota political history. To prevent this possibility it may be an advantage to have the Governor and Lieutenant Governor elected as a team, rather than individually, insuring that the Governor and Lieutenant Governor are of the same political party.

Governors of North Dakota have received praise as well as criticism over their use of the gubernatorial veto and Governor Guy is no exception. Guy has probably received more publicity over his use of the veto than the previous governors primarily because he has been Governor longer than any other person. The increase in the various types of news media and the improvement of these means of communication have also contributed to the publicity that Guy has received.

Governor Guy, a Democratic Governor seemingly surrounded by

¹⁶Grand Forks Herald, January 28, 1961, p. 8.

Republicans, appears to receive more criticism than praise over the use of the veto. Not only have a number of Republicans criticized Guy but some Democrats have disapproved of his use of the veto too. There is also evidence that both political organizations have, at times, supported the Governor's actions. A gubernatorial veto will affect different groups and interests in various ways as Governor Guy found out.

A great number of the Republican charges are that Guy vetoes for political reasons. Senator Evan Lips, Senator Majority Leader in 1967, states this fact:

The historic number of vetoes which the Governor has imposed on good legislation that would have been beneficial to our State, proves, beyond a doubt, that he has only his political future in mind and not the State of North Dakota.¹⁷

Bruce Streibel, House Floor Leader, remarked after a Guy statement:

It was the first time that I had seen a public official attempt to label conservatives as spenders.

Guy, according to Streibel, was placing priority on politics rather than on concern for people.¹⁸

Robert McCarney was another Republican who thought Guy wasn't doing all the vetoing for the people of North Dakota. McCarney referred to Guy as "the fastest pen in the West."¹⁹ If the Governor was considered fast by McCarney, then the legislature was equally as

¹⁷Ibid., March 12, 1967, p. 24.

¹⁸Ibid., March 10, 1967, p. 16.

¹⁹Ibid., March 18, 1967, p. 4.

fast. It took the House five minutes to override Guy's veto of the partial personal property tax after getting his veto message.²⁰

Larry Erickson, Democratic party chairman, observed that another veto was overridden within minutes after being received. In a statement on the speed in overriding Governor Guy's veto of the corporate farm bill, Erickson said:

The House overriding Governor William Guy's veto of the corporation farm bill a few minutes after receiving it was to deny the voters of this state an opportunity to contact their representatives.

The majority opinion of our citizens is against the corporation farm bill. The bill is an open gate for every stray million dollars to come into this state to outbid the family farmer for any available acreage.²¹

The Herald commented on Guy's veto of the partial personal property tax, that the veto seemed politically motivated. The paper accused the Governor of trying to make votes from vetoes.²²

When some of Governor Guy's vetoes came under attack other people defended his action. Guy's veto of the bank interest rate was considered politically motivated by the executive secretary of the North Dakota Banker's Association. William Daner said of the veto, "It was another in a series of the Governor's politically motivated vetoes."²³ State Democratic party chairman, Larry Erickson, took exception to Daner's criticism of Guy, by relating that the Republicans had campaigned deploring high interest rates, but couldn't wait to raise them even higher when given the opportunity. Erickson reminded Daner of the North Dakota Banker's Association Convention

²¹Ibid., February 28, 1967, p. 10.

²²Ibid., March 4, 1967, p. 4.

²³Ibid., March 16, 1967, p. 11.

held at Williston two years earlier. At this convention banners and posters promoting Republican legislators and congressional candidates flooded the hall. The convention was even halted long enough for the Republican party to take up a collection right on the floor, according to Erickson. Daner was asked by Erickson how he could consider the Republican legislature's raising interest rates as not being political, yet consider it political when the Governor vetoed such rates.²⁴

Governor Guy also had some personal views over political motivations on this same bill. Guy in a speech to the Democratic Legislative Advisory Committee, stated that there was a possibility that the Republican controlled legislature of 1967 did not want to override his veto of the bank interest rate bill. The Governor had informed the committee handling this legislation that he would veto the bill increasing minimum rate interests from seven to eight per cent. This bill would have applied to banks and lending institutions. According to Guy the bankers were among the main supporters of the Republicans in the last campaign. Even with the advanced warning of the veto, the bill didn't reach the Governor until the legislature had gone home, thereby preventing a chance to override the veto. Guy said:

Republican majorities had complete control over legislation and timing, but these increased interest bills came to me after the legislature had left. This indicates to me that the Republican party is grateful to the banking fraternity, but decided to pay them off in confederate currency.²⁵

²⁴Ibid., March 16, 1967, p. 11.

²⁵Grand Forks Herald, March 22, 1963, p. 1.

Governor Guy was also accused of playing politics in 1963 over the use of the item veto. The Governor had itemed out \$140,000 from appropriation bills that provided funds for the operation of various state departments. Guy received criticism from the Republicans but this was to be expected as the cuts were in departments headed by Republicans.

C. P. Dahl, who was the Republican appointed Director of the State Laboratory Department, had his salary appropriation itemed out. Dahl complained that the Democratic Governor's action was 'purely political.'²⁶ Guy indicated that Dahl's salary could be paid from the money authorized for clerk hire to be spent for inspection, some of which was being used for political purpose.²⁷ The Governor didn't go into detail on this political charge.

State Insurance Commissioner Frank Albers had his travel expenses itemed out of the appropriation bill involving his department. Albers said that Guy's vetoes were in departments headed by Republicans and he added:

. . .he's (Guy) still sore because he couldn't get the best of Jensen and he's taking it out on me.²⁸

A.J. Jensen was the former Republican Insurance Commissioner who, before he retired in 1962, had battled Guy many times.²⁹

On the same veto Guy drew criticism from Representative James W. Johnson, also a Republican. Johnson said that if Guy wanted to

²⁶Ibid., March 22, 1963, p. 1.

²⁷Ibid.

²⁸Ibid.

²⁹Ibid.

save money, the Governor could have reduced his own appropriation. Guy was accused of 'spite politics' by Johnson for making the cuts. The Herald records Johnson's statement:

By these vetoes our Governor has certainly signified that to him spite politics is more important than efficient administration of our state departments. . . In the interests of sound state government, the Governor could far better have reduced his own appropriations if saving money was his only motive in the vetoes which he made.³⁰

No one person is apparently safe from political attack over a gubernatorial veto. Only the Governor can sign a veto message, but there are times when people close to him also receive criticism.

Commissioner of Labor Orville Hagen commented after a Guy veto:

It appears that politics was the main reason for vetoing House Bill 655. Governor Guy, his Administrative Director, Lloyd Omdahl, and Dockter apparently did not want the Republican controlled legislature to have credit for enacting this legislation.³¹

Wallace Dockter, President of the North Dakota AFL-CIO Labor Union, could not be blamed if he had mixed emotions for being included in Hagen's charge. Earlier in March of the same year, Dockter had complained about a Guy veto of the personal property tax bill.³²

Governor Guy was criticized for failing to sign four revenue bills in 1963, and allowing the bills to become law without his signature. Fay Brown attacked Guy by saying:

I am sure by now the citizens of North Dakota are well aware of the phony double talk by the man occupying the Governor's office, who puts the interest of special groups ahead of that of the welfare and good of all the people of North Dakota.³³

³⁰Ibid., p. 7.

³¹Grand Forks Herald, March 17, 1967, p. 9.

³²Ibid., March 5, 1967, p. 26.

³³Grand Forks Herald, March 26, 1963, p. 1.

On the day before Brown's criticism, Governor Guy, after allowing the four revenue bills to become law, belittled the Republican controlled legislature. The Governor stated that he would have vetoed these bills and called a special session if he thought the majority party could improve their tax program. Guy remarked:

But how could a Republican majority be expected to improve on something that took a record 70 days to do in the first place.³⁴

If the people of North Dakota thought that Governor Guy had put the interests of special groups ahead of them, as Brown said, it was not indicated by the election of 1964. Governor Guy was elected to a third term of office by the people of North Dakota, and also became the first Governor elected to a four year term of office.

Governors have changed their viewpoint on legislation and Governor Guy is no exception. In 1961, Guy signed a bill prohibiting any North Dakota city from going on daylight saving time. In 1967 the Governor vetoed a bill that would exempt North Dakota from daylight saving time. The Governor listed eleven reasons for his veto of this bill, and said that he had done more research on this bill than on any other to cross his desk. Guy stated that his reason for changing his view was not because he opposed standard time, but that he desired North Dakota to be on the same time as the rest of the nation. The Governor was concerned about the heavily populated North Dakota counties bordering next to Minnesota. Guy said that these counties, "would be heavily disadvantaged if we did not observe uniform time."³⁵

³⁴Ibid., March 25, 1963, p. 1.

³⁵North Dakota, Session Laws, 1967. Veto Message Senate Bill 91.

In 1965 Governor Guy changed his view over legislation previously vetoed when he signed a bill that permitted an increase in trunk lengths from sixty feet to sixty-five feet. In 1963 Guy had vetoed a similar bill.³⁶

Governor Guy also changed his view over corporate farming. During the 1963 legislative session, Guy favored a limited corporate farming bill that would have changed the 1932 law forbidding any corporate agriculture operation in the state. There was enough opposition from the Governor's political party to prevent the bill from becoming a law. A similar situation occurred in the 1961 legislative session.³⁷ During the 1967 legislative session Guy vetoed a corporate farming bill even though he indicated the bill could hold advantages for him in his farming operation.³⁸

In exercising the gubernatorial veto during the 1967 legislative session, Governor Guy must have had many mixed emotions. One writer suggested how Guy must have felt during the hectic 1967 session.

L. J. Dewing reported in the Turtle Mountain Star:

I am quite sure that Governor Guy feels like he has been virtually left to fight the battle of state affairs alone, as he surveys the multitude of Republicans hurtling in and out of the legislative chamber doors, hallways and coat rooms. He could not be faulted if he is getting a feeling that there are more Republicans than people in Bismarck. He sees all his poor little vetoes go for naught as the legislature gobbles each one he hurls at it and gleefully overrides it. I'll bet he is even beginning to wonder if anyone will listen to him when he shouts 'no' at home anymore.³⁹

³⁶Grand Forks Herald, March 17, 1965, p. 1.

³⁷Grand Forks Herald, January 27, 1963, p. 1.

³⁸Grand Forks Herald, March 24, 1967, p. 9.

³⁹Turtle Mountain Star as cited in the Grand Forks Herald, March 12, 1967, p. 6.

The legislature didn't 'gobble' each veto, nor did it 'override each veto' as Mr. Dewing implies. Three vetoes were sustained by the Senate.

Governor Guy did receive support over some of his vetoes in 1967. The Mandan Morning Tribune supported two non-political vetoes. The veto of a bill allowing unlimited speed on the interstate highways and the daylight time action of the Governor were favored by the newspaper. It reasoned that the action put the state more in line with what other states were doing.⁴⁰ The Herald didn't believe the Governor acted wisely or in the best interests of the state in all of his vetoes, but it did approve setting aside the measure that would have eliminated traffic speed limits on certain interstate highways.⁴¹

The use of the gubernatorial veto by Governor Guy will no doubt have an effect on his political future. Possibly the measures selected by Guy to veto will be the issues in the 1968 election campaign. According to the Mandan Morning Tribune:

Whether it is Guy or someone else carrying the Democratic banner, that candidate will run against a 1967 Republican legislative record. One can expect to hear in the months before the election about corporate farming, pollution, increased sales tax, tax loopholes and reform, increased interest rates, taxing cooperatives, and many other subjects.⁴²

The Herald predicted that Guy will be defeated if he runs for a fourth term. In the editorial, the writer believed that Guy had

⁴⁰Mandan Morning Tribune as cited in the Grand Forks Herald, March 19, 1967, p. 19.

⁴¹Grand Forks Herald, March 21, 1967, p. 4.

⁴²Mandan Morning Tribune as cited in the Grand Forks Herald, March 6, 1967, p. 9.

certainly done enough for the state, or done the state enough, depending on the individual viewpoint.⁴³

If Governor Guy decides to run for a fourth term, it will be interesting to see if the Herald's prediction is correct or not. It will also be interesting to see what viewpoint the individual voter takes on the performance of Governor Guy.

In the study of Guy's use of the veto, one finds many areas of legislation vetoed. The Governor's messages are clear as to his reason or reasons for issuing the veto. Governor Guy stated that his reasons were in the public interest or not good policy. The use of the gubernatorial veto by Governor Guy cannot be considered excessive, when compared to the history of the veto usage in North Dakota. Considering that political party differences existed between the executive and legislative branches during Guy's tenure of office and that the voters elected Guy to the office of Governor three times, one might expect the Governor to act in the manner he considers to be in the best interests of the people who placed him into office.

⁴³Grand Forks Herald, March 12, 1967, p. 4.

CHAPTER IV

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

The Northwest Ordinance established an absolute gubernatorial veto for the early Dakota Territorial governors over acts of the territorial legislature. Congress, later, changed the organic law to allow the territorial legislature to override the executive veto by a two-thirds vote of each house. The governor retained an absolute veto over legislation after the adjournment of the legislature. The item veto was not included in the veto powers of the Dakota Territorial governors. The power to veto legislation of all types was retained by the territorial governors of Dakota until statehood was achieved for North and South Dakota.

Governors of North Dakota have had the veto power since the beginning of statehood. There has been one constitutional amendment relating to the gubernatorial veto power since the adoption of the North Dakota State Constitution. The governor has three days in which to veto or sign a bill during the legislative session and fifteen days in which to sign or disapprove after adjournment of the Legislative Assembly. The legislature may override a veto by a two-thirds vote of the members elected. The item veto has been available to governors since statehood. In 1919 the governor was given authority to veto acts of the State Industrial Commission. This is not a legislative veto, but is still a type of veto power.

The power to veto initiated or referred measures is denied to North Dakota governors by the State Constitution. Only one Supreme Court decision has been rendered on the constitutional veto power of the governor. The ruling stated that Sundays were to be counted as a part of the fifteen day time period after adjournment.

Conclusions

The evidence gained from this study indicates that almost all the Dakota Territorial governors used the veto power over territorial legislation. There is no definite pattern on the use of the veto by the territorial governors. Many different types of legislation were vetoed by the different governors. The evidence also indicates that when the Dakota Territorial Legislature gained the authority to override a gubernatorial veto, the Assembly didn't hesitate to exercise this power. A part of the problem, that caused vetoes to be overridden, was due to the fact that executives were appointed by the President of the United States and the legislature was elected by the people of the territory. Also, the political party differences and the independent thinking of the people of the territory had a part in the veto problems of the territorial legislature. Evidence was also found that at least one Dakota governor desired the item veto power, but he was not granted this authority by the Congress. It can be stated that politics was very evident when the Dakota Territorial governors used the veto power.

The use of the veto by the governors of the State of North Dakota exhibits no definite pattern. All but one governor has exercised the gubernatorial veto when given the opportunity to do so. It has been exercised by both Democrat and Republican governors. A

greater number of vetoes were cast by Republican than by Democratic governors. However, there have been more Republican than Democratic governors in the state.

When there have been political party differences between the executive branch and the legislative branches, the veto power was exercised more freely than when the two branches were controlled by the same party. Even when the governor and the legislature are of the same political party there seems to be no guarantee that the veto will not be exercised. Differences within the Republican party led to Governor Langer's extensive use of the gubernatorial veto.

This study also indicates that in periods of economic distress, the veto will be used more often than during periods of prosperity. During times of national emergencies, such as war, the veto has not been used to any extent by North Dakota governors.

More gubernatorial vetoes are exercised in North Dakota after the adjournment of the Legislative Assembly than during the session. The Legislative Assembly is to a large extent responsible for many of these vetoes because of the large amount of legislation passed just prior to adjournment.

The veto power has not been abused by North Dakota governors when compared to a number of other states. The North Dakota governors seemingly have not used their veto power in haste or without considerable thought. When one reads the veto messages of the various governors, this point seems quite clear. Charges that a great many gubernatorial vetoes in North Dakota are politically motivated cannot be answered by this study. There are indications that some of the 523 vetoes were political, but only the men who issued the vetoes could answer

these charges. There are no indications in the veto messages that the governor's reasons were political.

This study also gives no evidence that the item veto has been abused by any one governor. The amounts of money deleted or reduced from appropriation bills have been primarily in the interests of economy and keeping expenditures within estimated income. Just what the governors item veto power actually involves will never be absolutely clear until the North Dakota Supreme Court clarifies it by a court ruling.

It would seem that future North Dakota governors will use their veto power when the governor deems it justifiable and in the public interest. The political history of North Dakota indicates that the governor and the legislature will not always be in agreement. It is safe to assume that governors will veto legislation in the future and the Legislative Assembly will occasionally override a governor's veto.

Recommendations

The trend in state constitutional revisions is clearly in the direction of giving the executive more time for deliberation on legislation.¹ The three day time limit for gubernatorial consideration during the legislative session should be increased to five days. The large number of bills that are submitted to the governor for his study would indicate the need for increasing this

¹Joseph E. Kallenback, The American Chief Executive, the Presidency and the Governorship (New York: Harper and Row, 1966), p. 362.

provision. Only nine states limit the governor to three days for action on legislation.²

This writer would be in agreement with Lieutenant Governor Charles Tighe for increasing the legislative session to longer than sixty days. Tighe said, "I am convinced that the amount of legislation now being introduced cannot be given fair and adequate consideration in the 60-day sessions every two years."³

The sixty-day constitutional limitation upon the Legislative Assembly creates many problems. Because of the short period allowed for making laws, a great deal of legislation is passed in the final days of the session. The large number of bills reaching the governor's office in these final days presents problems for both the governor and the legislature. By establishing annual sessions of the legislature, meeting for a period of 120 days each year, may alleviate some of the problems relating to the veto. With the longer time period, legislation could be sent to the governor at an earlier time and would allow the legislature additional time to consider a gubernatorial veto. The annual sessions seemingly would make the legislature more responsive to the needs of the state and perhaps would allow closer supervision over the joint actions of the executive and legislative departments.

It is also recommended that the governor be given the power to reduce items in appropriation bills. This proposal was included in a constitutional revision amendment in 1966 and failed. Perhaps

²Book of the States, p. 58. Indiana, Iowa, Kansas, Minnesota, New Mexico, North Dakota, South Carolina, South Dakota and Wyoming.

³Grand Forks Herald, July 25, 1967, p. 2.

a single amendment should be offered to the people allowing the reduction of items by the governor; perhaps a constitutional convention should be held to modernize the entire Constitution, and this proposal should be a part of the revision made.

Placing all constitutional changes in one amendment offers too many proposals that might offend too many people, although perhaps for varying reasons. Such persons would vote against the amendment, causing the whole amendment to fail.

Allowing the governor to reduce items in appropriations would permit him to keep them close to his budget proposal. The governor would not be placed in the situation of having to accept or reject each appropriation item.

It is also recommended that the Governor and Lieutenant Governor be elected as a team, that is to say, of the same political party. This suggestion doesn't directly apply to the veto power, but it would prevent a possible situation as outlined earlier in this paper.

APPENDIX A

NORTH DAKOTA CONSTITUTIONAL PROVISIONS

FOR THE GUBERNATORIAL VETO

ARTICLE III SECTION 79

Every bill which shall have passed the Legislative Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign, 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 the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members-elect 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 it be approved by two-thirds of the members-elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sunday excepted) after it shall have been presented to him, the same shall be a law, unless the Legislative Assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections, in the office of the Secretary of State, within fifteen days after such adjournment.

ARTICLE III SECTION 80

The Governor shall have power to disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void, unless enacted in the following manner: If the Legislative Assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

ARTICLE III SECTION 81

Any Governor of this State who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the Legislative Assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said Governor, shall appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give his official vote or influence on any matter pending or hereafter

to be introduced into either house of said Legislative Assembly, or who threatens any member that he, the said Governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member shall be punished in the manner now, or that may hereafter, be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this State.

ARTICLE II SECTION 25 AS AMENDED BY ARTICLE 15 AND ARTICLE 26 OF AMENDMENTS

The veto power of the Governor shall not extend to the measures initiated by or referred to the Electors. No measures enacted or approved by a vote of the Electors shall be repealed or amended by the Legislature, except upon a yea and nay vote upon roll call of two-thirds of all the members elected to each house.

APPENDIX B

PUNISHMENT FOR VETO THREAT

North Dakota Century Code 12-08-18. Governor receiving bribes.--

Any person holding the office of governor of this state who:

1. Asks, receives, or agrees to receive any bribe upon any understanding that his official opinion, judgment, or action shall be influenced thereby;
2. Gives, offers, or promises his official influence in consideration or upon condition that any member of the legislative assembly, or either house thereof, shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity;
3. Menaces any member of the legislative assembly, or either house thereof, by the threatened use of his veto power;
4. Offers or promises any member of the legislative assembly, or either house thereof, that he, the said governor, will nominate for appointment or appoint any particular person or persons to any office created or thereafter to be created, in consideration or upon condition that any such member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly; or
5. Threatens any member of the legislative assembly, or either house thereof, that he, the said governor, will remove any person or persons from any office or position held by such person or persons under the laws of this state, with intent in any manner to influence the action of said member,

shall be punished by imprisonment in the penitentiary for not less than one year nor more than ten years, or in the county jail for not more than one year, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment, and upon conviction of any of the offenses mentioned in this section, shall forfeit any and all right to hold any office of trust or honor in this state.

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