

MESSAGE FROM THE GOVERNOR.

Mr. J. T. Bowman, private secretary to the Governor, appeared at the bar of the House, and, being duly announced, presented the following message from the Governor, which was read to the House:

Governor's Office,
Austin, Texas, Aug. 29, 1911.
To the Senate and House of Representatives:

The appropriation bill embodied in Free Conference Committee substitute for Senate bill No. 3 reached the Governor's office Saturday evening, August 26, 1911, at 6:30 o'clock, and I have given same my careful consideration.

The bill carries a grand total for the two fiscal years ending August 31, 1913, of \$10,208,613.85. Of this amount \$2,668,405.00 is appropriated for the educational institutions of the State; \$1,847,525.45 is appropriated for the courts and judiciary; \$1,824,864.00 is appropriated for the support of the insane asylums; and \$1,049,575.00 is appropriated for pensions, making a total appropriated in this bill for these four items of \$7,390,365.45, which shows that the bill appropriates only \$2,818,248.40 for all other purposes of the State government.

Perhaps a comparison of the appropriations made by the present Legislature with those of the Thirty-first Legislature would not be out of place or uninteresting. The Thirty-

first Legislature made appropriations as follows: For the fiscal year ending August 31, 1910, \$5,770,715.55; for the fiscal year ending August 31, 1911, \$3,877,353.00; special appropriations, \$1,971,968.61; total appropriations by the Thirty-first Legislature, \$11,620,037.16, of which sum \$1,687,069.00 were vetoed, leaving the net appropriations for the two fiscal years ending August 31, 1911, \$9,932,968.16.

The appropriations by the Thirty-second Legislature are as follows: Year ending August 31, 1912, \$5,558,621.85; year ending August 31, 1913, \$4,649,992.00; special appropriations, \$781,269.99; total, \$11,119,883.84. This shows that the Thirty-second Legislature, in general and special appropriations, appropriated \$500,153.32 less than its immediate predecessor. No account is taken in this statement of appropriations for deficiencies by either the Thirty-first or Thirty-second Legislatures.

The items appropriated by the Thirty-first Legislature and vetoed by the Governor largely crippled the educational and eleemosynary institutions of the State, and the appropriations for these institutions by this Legislature are therefore necessarily larger than otherwise they would have been but for their previous neglect. The items in the bill that have been vetoed by me will approximate \$640,000.00, which will reduce the revenue requirements for the two fiscal years ending August 31, 1913, to approximately \$10,479,883.84. I had hoped to be able to reduce the appropriation bill to a still greater extent, but upon careful examination of same I found that I could not do so without seriously injuring the educational institutions and depriving them of the revenue necessary for their maintenance and proper advancement.

I had seriously hoped that the Legislature would resume its proper functions by the repeal of the Automatic Tax Law, and fix the tax rate of Texas at an amount sufficient to pay the expenses it has provided for by general and special appropriations. The hour for your constitutional adjournment is near at hand, and it now seems there is no hope for action in this particular on the part of the Legislature. As stated in several previous messages, the revenues that can be expected from

all other sources than ad valorem taxation are about \$3,000,000.00 per annum. This will require the raising of about \$5,500,000.00 by ad valorem taxes to meet the requirements of the general and special appropriations by this Legislature. This leaves out of consideration the payment of any deficiencies already accrued or that may hereafter appear.

It is a matter of regret to me that I have found it necessary to veto any of the items in the appropriation bill which in the wisdom of the Legislature it has deemed proper to include therein. I especially want to see our educational institutions and asylums amply taken care of. The bill which has received my approval carries the largest sum for the advancement of agricultural and live stock interests in this State of any bill ever filed in the Secretary of State's office with the approval of the Governor of Texas. It likewise carries the largest sums for the promotion of education of any bill ever enacted by a Texas Legislature.

I regret exceedingly the necessity for having to veto any portion of the appropriation for the executive departments of the State government. I regret that the Legislature felt it incumbent upon itself to seek to deprive the Governor of the constitutional prerogative of vetoing any item for any department where in his judgment such appropriation was excessive or unnecessary. In the bill as filed with the Secretary of State I have exercised this prerogative, nevertheless, and vetoed the lump sum of \$83,160.00 appropriated to the Attorney General's Department. After making this lump appropriation in one item, the Legislature divided the same into two items of \$41,580.00 each for the fiscal years ending August 31, 1912 and 1913, respectively. By striking out the lump appropriation and the words describing the same, and the appropriation of \$41,580.00 for the second year, the sum of \$41,580.00 is left subject to the use of the Attorney General for the maintenance of his department for the two fiscal years named, any portion of which can be used, under the language of the bill, for any purpose in carrying on the duties of his office. This is not as much, perhaps, as should be appropriated to this department. I have no desire to cripple its efficiency, but under all the

circumstances I felt impelled to take the course I have in this instance. If further means are needed to carry on the work of said department, as shown in the statement filed with the Secretary of State, I shall be glad to approve application for necessary deficiency warrants to meet all necessary expenses of that Department.

I find by reference to the appropriation for this department by the Thirty-first Legislature that the sum of \$34,830.00 was appropriated for the fiscal year ending August 31, 1910, and \$24,330.00 for the fiscal year ending August 31, 1911, or a total of \$59,160.00 for the two years. Of this amount about \$11,902.00 has lapsed or will lapse, showing that the total requirements of that department for the last two years, with an increased force of assistants, was \$47,258.00. In view of these facts, the sum of \$83,160.00 for the two years ending August 31, 1913, was deemed by me to be excessive, and should not have been asked for, especially in view of the unsatisfactory condition of the finances of the State at this time.

On account of the manner in which the appropriation was made, no other course was left open to me than to veto the bulk sum of \$83,160.00 and the item of \$41,580.00 for the second year. Even under present conditions and taking the expenditures for the last two fiscal years as a basis, it will not require more than \$6,000.00 or \$7,000.00 deficiency to meet the requirements of the Attorney General's office up to the 31st day of August, 1913. The sum which remains in the bill subject to the Attorney General's unconditional control, as seems to have been the wish and will of the Legislature, will be amply sufficient, even upon the present expensive basis under which that department is now conducted, to last him until the next Legislature meets in January, 1913, without even a deficiency. The paragraph containing the items which follow the appropriations for the respective years named is vetoed, because it is out of harmony with the remainder of the appropriation after the objections already noted and the items named were disapproved.

I am very sorry that it was necessary to veto any part of the appropriation for the University of Texas, but it was so stated in the bill as to leave me no other alternative under

the circumstances. Whatever may be actually needed in addition to the remaining appropriation for the fiscal year ending August 31, 1912, to pay the salaries of professors absolutely necessary can be supplied by application to the Governor for deficiency to meet the same, on giving thirty days' notice.

As provided in the Constitution, I append hereto copy of the statement containing the items vetoed by me as filed with the Secretary of State.

Respectfully,
O. B. COLQUITT,
Governor of Texas.

Governor's Office,
Austin, Texas, Aug. 29, 1911.
To the Secretary of State:

As provided in Section 14 of Article IV of the Constitution of Texas, I transmit herewith for file in the office of the Secretary of State, Free Conference Committee Substitute for Senate bill No. 3, said bill being "An Act making appropriations for the support of the State government for two years beginning September 1, 1911, and ending August 31, 1913, and for other purposes, and prescribing certain regulations and instructions in respect thereto, to make additional appropriations for the support of the State government for the year ending August 31, 1911, and to pay various miscellaneous claims against the State, and declaring an emergency," said bill having passed the First Called Session of the Thirty-second Legislature of the State of Texas, and having been received in the Governor's office on August 26, 1911, at 6:30 p. m.

Said Free Conference Committee Substitute for Senate bill No. 3 has been signed by me on this date, and the items therein not objected to are approved. I append to the said bill at the time of signing the same this statement showing the items to which I object, and the reasons therefor. Where the items objected to have no special reason assigned for that action, they are vetoed on the ground that the appropriations are not essential to the efficient administration of the State government or of the particular department for which they may have been made. I have run a blue pencil through said items objected to, as well as the words describing them, as follows, except where the appropriation covers a

period of two years and that for only one year is vetoed:

Executive Department.

(1) "Salary of stenographer and bookkeeper for Board of Pardon Advisers," \$1,100.00, for the fiscal years ending August 31, 1912 and 1913, is objected to on the ground that it is not necessary. An extra stenographer has been given the Governor's office, and he will have time to do the work of the Board of Pardons. (2) "Expenses of the Board of Pardon Advisors in visiting the penitentiaries, reformatory and camps," \$300.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to. With the Prison Commissioners and parol officers provided by the penitentiary act, it will not be necessary for the Board of Pardons to perform this service.

Department of State.

(1) On page 5, the item of "Salaries of two stenographers," \$2,400.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to on the ground that it was not necessary to increase the force in the office of the Secretary of State to this extent. (2) The item of "furniture, files and typewriters," \$400.00, for the fiscal year ending August 31, 1912, is objected to on the ground that it is not necessary. (3) The item of "file cases," \$500.00 for the fiscal year ending August 31, 1913, is objected to on the ground that it is not necessary.

Public Buildings and Grounds.

(1) On page 7, the item reading: "Chemicals for fire extinguishers," \$500.00, for the fiscal year ending August 31, 1912, is objected to as being unnecessary. On page 8, the item of \$10,000.00, for the fiscal year ending August 31, 1913, "for improvements, maintenance and care of San Jacinto battle grounds," is objected to. I think the \$10,000.00 which is provided for the fiscal year ending August 31, 1912, is sufficient.

Texas Library and Historical Commission.

(1) On page 12, the item reading: "Salary of stenographer and copyist," \$1,000.00 for each of the

fiscal years ending August 31, 1912 and 1913, is objected to as not being necessary. (2) On page 13, the item of "Traveling expenses of the State Librarian in the service of the Commission," \$100.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to. (3) The item on page 13, for "Collecting and disseminating information about public libraries," \$200.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to as being unnecessary. (4) The item on page 13, for "Shelving for books, newspapers and manuscripts, with the necessary stack floors, railings and stairs; tables and chairs for reading room; office furniture, filing cabinets for legislative reference section, card catalogue cases; gratings over windows in manuscript room, cases for Texas, Mexican and Confederate flags," \$2,000.00 for the fiscal year ending August 31, 1913, is objected to as unnecessary.

State Purchasing Agent.

The item of "Salary of bookkeeper and auditor," \$1,500.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to on the ground that it is not necessary.

Live Stock Sanitary Commission.

The item on page 26, for "Horse allowance, \$30.00 per month, twenty-three inspectors," \$8,280.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to.

State Mining Board.

On page 27, the item: "Traveling expenses for Board," \$600.00 for each of the fiscal years ending on August 31, 1912 and 1913, is objected to as not being required.

Attorney General's Department.

(1) On page 30, the item in words as follows: "the sum of Eighty-three Thousand and One Hundred and Sixty (\$83,160.00) Dollars" is objected to and disapproved—first, because it is an excessive appropriation of the public funds for the purposes appropriated at a time when the burden of taxation upon the people of this State must necessarily be

increased to supply deficits and pay the necessary expenses of government; second, because the same is an invasion of the Constitution, in that it is an attempt to make an appropriation in gross and not for specific purposes, as directed by the Constitution.

(2) The item on page 30 of \$41,580.00 for the fiscal year ending August 31, 1913, is objected to and disapproved. The remaining item of \$41,580.00, as appropriated, is available for use until exhausted, and may be applied during both the fiscal years ending August 31, 1912, and August 31, 1913. If said sum of \$41,580.00 is not sufficient for both of said years, any additional amount actually needed for the efficient administration of the Attorney General's Office can be provided by deficiency allowance when the same is ascertained to be necessary.

(3) The following language, beginning on page 30 and concluding on page 34, is objected to and disapproved, for the reason that it is not in harmony with the appropriation for the Attorney General's Department in consonance with the objection to the two items already eliminated as outlined above:

"For the guidance of the Attorney General in the expenditure of such sums out of the above item of appropriation of \$83,160.00 as may be necessary to properly conduct the business of his department, he is hereby empowered and authorized to employ such regular assistants as he may deem necessary, not to exceed seven in number at any one time, one of such assistants he shall designate as First Office Assistant Attorney General; and there may be expended out of the above item of appropriation a sum not exceeding \$20,000.00 per annum for the purpose of paying the salary of the Attorney General at \$2,000.00 per annum and such fees as are prescribed by law, not to exceed \$2,000.00 per annum, and for the purpose of paying the salaries of the assistants employed; provided, that no assistant shall receive more salary than \$2,500.00 per annum; and the Attorney General shall have the power and authority to employ such stenographic clerks as he may deem necessary to carry on the work of the Department, not to exceed four in number, one of whom shall be

chief clerk and bookkeeper; and there may be expended out of the above item of appropriation a sum not to exceed \$4,900.00 per annum to pay the salaries of such stenographic clerks, provided that no stenographic clerk shall receive more than \$1,300.00 per annum; there may be employed one porter, who shall be paid out of the above item of appropriation a salary of \$480.00 per annum; there may be expended out of the above item of appropriation, for postage, stationery, telegrams, telephones, furniture, repairs, express, typewriters and fittings, and contingent expenses so much thereof as may be necessary, not to exceed the sum of \$1,350.00 per annum. The remainder of the above item of appropriation, or so much thereof as may be deemed necessary by the Attorney General, shall be expended for costs in civil cases in which the State of Texas or any head of a Department is a party; for the actual traveling expenses and hotel bills incurred by the Attorney General, or any of his assistants or employes, in giving attention to the business of the State elsewhere than in the city of Austin; for depositions and procuring evidence and documents to be used in civil suits, or contemplated suits, wherein the State is a party; for law books and periodicals; and for the enforcement of any and all laws of the State of Texas wherein that duty devolves upon the Attorney General, and for the payment of any and all expenses deemed necessary by the Attorney General in the prosecution and defense of all suits, and particularly for the enforcement of the anti-trust and corporation laws and for the employment of special counsel and other help when the same may be deemed necessary by the Attorney General; provided, that the head of said department shall keep a record of the absences of the various employes and the reasons therefor, whether from sickness, vacation or on leave of absence, and that the record of such absence be incorporated in the report made biennially by the head of said department; provided, that the amount herein appropriated as stated herein, and no more, shall be paid out of the general revenue for the Attorney General's Department during the fiscal years beginning September 1, 1911.

sary by the Attorney General; pro- and ending August 31, 1913; and shall be created, nor shall any warrants be issued nor obligations incurred in excess of the amounts here- in appropriated."

Treasury Department.

(1) The item on page 36, reading as follows, is objected to: "Salary of depository, file and bond clerk, to be used in two years," \$1,000.00. (2) So much of clause (b), beginning on page 37 and ending on page 39, as authorizes suit to be brought against the State and the payment of certain claims, which reads as follows, is objected to:

"and for the payment of the claims against the State of Texas, held by Pumphrey and Kuykendall, also Mrs. Louise M. Day and Mrs. Sue M. Read, assignees and owners of the amounts paid into the State Treasury by the Day Land and Cattle Company, also Taylor and Stevens, also Brown, Gove and Company (or their vendees), growing out of leasing land in 1885 by the State Land Board, in what was once known as Greer county, Texas; provided said claims are established by any District Court of Travis county; and authority is hereby given to the said Pumphrey and Kuykendall, also Mrs. Louise M. Day and Mrs. Sue M. Read, owners of the claims of the Day Land and Cattle Company, also Taylor and Stevens, also Brown, Gove and Company, or their assignees, or holders of said claims, to institute suit against the State of Texas in any District Court of Travis county, for the recovery of said claims; provided, further, that upon the trial of such cause, if said claims be established in favor of the holder or holders thereof, that no laches or limitation shall defeat a recovery; provided, further, that the parties filing suit shall pay all court costs; provided further, that the State of Texas may be cited in said cause by serving citation upon the Attorney General of Texas; provided, further, that if judgment is recovered in favor of the holder or holders of said claims a certified copy of such judgment shall be filed with the Attorney General, which shall be his authority for approving said claims to be paid out of any fund that is appropriated and in existence for the refund of er-

roneous sales or erroneous leasing of land, etc., and the Comptroller shall draw his warrant against the available school fund account for such amount."

The foregoing is disapproved because it embraces a subject of legislation not submitted to the Legislature.

Comptroller's Department.

(1) On page 42, the following item is objected to: "Salary of assistant corresponding clerk," \$1,200.00 for each of the fiscal years ending August 31, 1912, and August 31, 1913. (2) On page 42, the item of "Salary of one unorganized county tax clerk," \$1,100.00 for each fiscal year ending August 31, 1912 and 1913. (3) The item on page 42 of "Salary of mailing and file clerk," \$1,100.00 for each fiscal year ending August 31, 1912 and 1913, is objected to. (4) On page 43, the item of "Salary of assistant mailing and file clerk," \$1,100.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to. (5) On page 43, the item: "For enforcing the provisions of Sections 9a, 9b, 9c, 9d, 9e, 9f, 9g, 9h and 9i of Chapter 17 of the Acts of the First Called Session of the Thirty-first Legislature, to be expended in two years," \$7,500.00, is objected to on the ground that increased appropriation for the enforcement of the law to other departments of the State government makes this appropriation unnecessary. (6) On page 43, the item of "Salary of four assistant clerks at \$1,100.00 each," \$4,400.00 for each of the fiscal years ending August 31, 1912 and 1913, are objected to as not being needed. (7) The item on page 43 reading as follows: "For clearing up basement, indexing records, for filing same and purchase of shelving to be used in two years," \$3,000.00, is objected to as not being essential. (8) The item on page 43, "One electric adding machine," \$450.00, is objected to for the reason that I am informed the Department already has two adding machines.

General Land Office.

(1) On page 44, the following item: "Salary of Assistant Chief Clerk, \$1,400.00" for each fiscal year ending August 31, 1912 and 1913, is objected to on the ground that the

service of such clerk is not necessary. (2) On page 45, the item: "Salary to employ extra help when necessary to handle accounts and payments," \$1,200.00 for each fiscal year ending August 31, 1912 and 1913, is objected to on the ground that it is not necessary. (3) The item on page 46, reading as follows: "Typewriting machines, materials and repairs, provided old machines may be exchanged in part payment for new ones, to be expended in two years," \$1,000.00, is objected to on the ground that the appropriation is excessive. A deficiency for what is actually needed may be granted when necessary. (4) On page 46, the item reading as follows: "Surveying under Chapter 147, Acts of the Thirtieth Legislature, to be expended in two years," \$7,500.00, is objected to on the ground that necessary surveying can be done by county surveyors, and the law provides for their compensation. (5) The item on page 46 reading as follows: "Repairs to building to be expended in two years," \$5,000.00, is objected to.

University of Texas.

On page 51, the following item: "Additional salaries, equipment and supplies," \$131,545.00 for the fiscal year ending August 31, 1912, is objected to. I regret exceedingly the necessity that impels me to do this. The appropriation for the University and all other educational institutions in this bill is far in excess of appropriations ever before made for them by the Texas Legislature.

Agricultural and Mechanical College.

(1) On page 51, the item of \$15,000.00 for "Central heating system," for the fiscal year ending August 31, 1913, is objected to for the reason that the bill appropriates \$30,000.00 for the same purpose for the year ending August 31, 1912. (2) On page 52, the item of "Addition to steam, electric, water and power plant," \$20,000.00 for the fiscal year ending August 31, 1912, is objected to. (3) On page 53, the item reading: "Division of rural highway engineering," \$5,000.00 for each fiscal year ending August 31, 1912 and 1913, is objected to. I submitted to the Legislature the subject of creating the position of Highway Engineer

for the purpose of affording assistance to the counties and precincts in the building of good roads. (4) On page 53 the item reading as follows: "Animal husbandry building and barn and judging pavilion complete and equipped, to be constructed of brick, stone or concrete, all properly drained," \$30,000.00 for the fiscal year ending August 31, 1912, is objected to on the ground that there are other improvements of more imperative necessity, and that everything which might be desired can not be expected out of one or two years' appropriations. (5) The item on page 53 reading: "Plumbing and wiring to be expended in two years," \$10,000.00, is objected to.

Girls Industrial College.

The item on page 59 reading as follows: "For erecting dormitory," \$75,000.00 during the fiscal year ending August 31, 1913, is objected to. I am sorry that the financial condition of the State will not warrant me in allowing this appropriation to stand. The bill carries an item of \$75,000.00 to erect and equip an Industrial Arts building, which is in my opinion of more pressing need than the dormitory.

Sam Houston Normal Institute.

On page 60 the item which reads: "Central heating plant and equipment, complete," \$25,000.00 for the fiscal year ending August 31, 1912, is objected to.

North Texas State Normal.

The item on page 61 reading as follows: "For equipment of building for library, heating plant and gymnasium," \$7,500.00, to be expended during the fiscal year ending August 31, 1912, is objected to for the reason that another item in the appropriation for this institution will supply practically the same conveniences.

Southwest Texas Normal School.

The item on page 62 reading as follows: "For land for teaching agricultural and athletic field," \$3,500.00, to be expended during the fiscal year ending August 31, 1912, is objected to.

West Texas Normal.

(1) The item on page 63 reading as follows: "For biological and agricultural departments," \$6,125.00 for the fiscal year ending August 31, 1912, and \$1,000.00 for the fiscal year ending August 31, 1913, is objected to. (2) The item on page 63 reading: "For model school department," \$1,000.00, to be expended during the fiscal year ending August 31, 1912, is objected to.

Supreme Court.

The item on page 64 reading as follows: "Salary of stenographer to assist court reporter," \$900.00 for the fiscal year ending August 31, 1912, and \$900.00 for the fiscal year ending August 31, 1913, is objected to.

Court of Civil Appeals, Third District.

The item on page 70 reading: "Books for library and consultation room," \$500.00 for the fiscal year ending August 31, 1912, and the same amount for the fiscal year ending August 31, 1913, is objected to on the assumption that the appropriation is for the purchase of law books. The Third Court of Civil Appeals, being situated in the Capitol, has access to the Supreme Court Library, and for that reason I am of the opinion that the appropriation is not necessary.

Confederate Home.

(1) The item on page 81 reading as follows: "Horse and surrey," \$400.00, is objected to. (2) The item on page 82 reading: "One steam cooker and range," \$2,500.00, is objected to.

Blind Asylum.

On page 89 the item reading: "For re-covering with metal the old building, or so much thereof as may be necessary," \$2,000.00 for the fiscal year ending August 31, 1913, is objected to on the ground that if \$2,000.00 is enough to re-cover the whole building for the year ending August 31, 1912, a duplication of the expense for the year ending August 31, 1913, is unnecessary.

Deaf and Dumb Asylum.

(1) The item on page 94 reading as follows: "To take out all boilers, purchase and install new boilers, rebuild smokestack, enlarge boiler house and add store room for coal," \$6,000.00 for the year ending August 31, 1912, is objected to. (2) The item on page 94 reading as follows: "For purchasing cylinder printing press," \$1,000.00 for the year ending August 31, 1912, is objected to.

Epileptic Colony.

The item on page 96 reading: "Transportation," \$300.00 for each of the fiscal years ending August 31, 1912 and 1913, is objected to because the item of transportation is included in another appropriation for that institution.

State Lunatic Asylum.

(1) The item on page 99 reading as follows: "For additional machinery for new laundry," \$1,500.00 for each fiscal year ending August 31, 1912 and 1913, is objected to. (2) On page 99 the item reading: "Enlarging and equipping boiler house," \$15,000.00 for the fiscal year ending August 31, 1912, is objected to.

Southwestern Insane Asylum.

(1) The following item on page 103: "Pipe coverings," \$1,000.00 for the fiscal year ending August 31, 1912, is objected to. (2) The following item on page 103: "Cottage for outside employes," \$1,000.00 for the fiscal year ending August 31, 1913, is objected to. (3) The following item on page 103: "Fuel and oil storage depot and appurtenances thereto," \$4,000.00 for the fiscal year ending August 31, 1912, is objected to.

North Texas Hospital for the Insane.

The item on page 106 reading as follows: "Overhauling steam plant," for the fiscal year ending August 31, 1913, \$5,000.00, is objected to on the ground that the bill carries an appropriation of \$5,000.00 for the fiscal year ending August 31, 1912, to be used for overhauling said plant.

Pension Department.

(1) The item on page 110 reading as follows: "Salary of one stenographer," \$900.00 for the year ending August 31, 1912, and \$900.00 for the year ending August 31, 1913, is objected to on the ground that it is not needed. (2) On page 110 the following item: "Furniture and desk," \$200.00 for the year ending August 31, 1912, is objected to; and (3) on the same page, the item: "Typewriter," \$75.00 for the year ending August 31, 1912, is objected to on the ground that it is not needed.

State Penitentiaries.

The item on page 115 reading as follows: "For the purchase of one new engine, one new passenger coach for the State Railroad, and for the purchase of steel rails, cross ties and other material for repairing the road bed of the State Railroad," \$45,000.00 for the year ending August 31, 1912, is objected to. This item is vetoed because I do not believe the taxpayers should be expected to contribute their money for the maintenance of this "mistake."

Miscellaneous Items.

(1) The item on page 128 reading as follows:

"To refund Denison and Sherman R. R. Co. franchises erroneously paid under Chapter 19, Acts of the Twenty-ninth Legislature," \$358.34, is objected to.

(2) The item on page 129 reading as follows:

"To refund to railroad, wharf and terminal companies taxes paid under Chapter 141, Acts of the Twenty-ninth Legislature of the State of Texas for the years 1905 and 1906, for the reason said Chapter 141 was declared unconstitutional by the Supreme Court of the United States in Cause No. 207, G. H. & S. A. R. R. Co. vs. the State of Texas, opinion rendered May 18, 1908," \$35,755.37, is objected to.

(3) The item on page 131 reading as follows:

"To pay Higgins Oil and Fuel Co. for the following cars of oil furnished the State Lunatic Asylum as follows:

Invoice dated April 20th,
1907, Car No. 156.....\$214.86

Invoice dated June 4th,
1907, Cars Nos. 165 and
170 429.71

Invoice dated June 24th,
1907, Car No. 160..... 214.86"
\$859.43, is objected to for the reason that officials of the State seem not to be certain as to whether it is due. The next Legislature should authorize this company to bring suit, that it may have an opportunity to legally establish its claim against the State.

(4) The item on page 131 reading as follows:

"To pay W. M. Atkinson, District Attorney, Twenty-fifth Judicial District, for six days' services in 1908 and six days' services in 1909 at \$15.00 per day," \$180.00, is objected to on the ground that the Constitution provides an annual payment to district attorneys by the State of \$500.00, and no more.

(5) The item on page 131 reading as follows:

"To pay Waco Street Railway Co. for franchise tax erroneously paid June 16, 1911," \$431.00, is objected to on the ground that no evidence has been submitted to me to show that the tax was erroneously paid.

(6) The item on page 131 reading as follows:

"To refund the unearned portion of liquor dealers' licenses that expired on July 11, 1909, who voluntarily retired from business and did not take credit for the unearned portion of their licenses on renewals," \$1,000.00, is objected to. Investigation leads me to the conclusion that this appropriation is unnecessary.

(7) The item on page 134 reading as follows:

"To refund to R. A. J. Keel, Tax Collector of Johnson County, amount refunded to Hughes and Ewing, their unearned portion of liquor dealers' licenses," \$66.67, is objected to.

(8) The following item on page 135: "For the payment of W. J. Bailey for rent of farm for experiment station at Fort Worth for year ending December 1, 1911, in accordance with written contract made with W. J. Bailey by T. M. Campbell, Governor, A. B. Davidson, Lieutenant Governor, and E. R. Kone, Commissioner of Agriculture, the following sum, or so much thereof as may be necessary according to findings of the Board of Experimental Station," \$916.33, is objected to. If this contract was entered into, I presume

that previous provision had been made to meet the obligation.

(9) The item on page 136 reading as follows:

"To purchase a small tract of ground near the Sam Houston Monument at Huntsville, Texas, to be described by the Mayor of Huntsville as the chairman of the Sam Houston Monument Citizens' Committee, owned by W. O. B. Gillespie of Huntsville, Texas, not to exceed the sum of \$400.00," is objected to.

O. B. COLQUITT,
Governor of Texas.

The opinion of the Attorney General follows:

Attorney General's Department,
Austin, Texas, March 8, 1913.

Sir: You have submitted to us for construction the appropriation made for the Attorney General's Department at the First Called Session of the Thirty-second Legislature, which appropriation appears on pages 17 and 18 of the official publication of the laws passed by that Legislature.

There is now remaining on hand unexpended in the Treasury something like one thousand dollars of this appropriation, and the question is, whether or not this money is available for use by the Attorney General's Department for the year ending August 31, 1913? In all the varied courses which it has been the fate of this appropriation to take through the courts of the land, the question here submitted has not been adjudicated. We are left, therefore, to the ordinary rules of construction to determine whether or not the \$41,580 appropriated was appropriated only for use during the year 1912 or whether the balance thereof may be expended during the year 1913. In determining the question, we are also obliged to consider and determine the effect of the Governor's veto as made to the original bill itself. This naturally involved, of course, a history of, and the effect of, the qualified negative, which a Chief Executive has under our Constitution.

The Status of the Veto Power.

In the convention which framed the Constitution of the United States, there does not appear to have been any difference of opinion as to the propriety of giving the President a negative on laws enacted by Congress. The principal subject which seems to have been discussed was as to whether or not the negative should be absolute or qualified, and what number of votes should be necessary to pass the measure over the Executive disapproval. During the progress of this particular section in the constitutional convention, which framed the organic law of the United States, it was first placed in the section that it took an affirmative vote of two-thirds of the members of each House to pass the measure over the Executive veto. Subsequent to this, however, it was changed to three-fourths, but ultimately it was estab-

lished as we now find it in the Constitution, which requires two-thirds of the members of each House to pass a vetoed measure over the veto. (Storey on Constitution, Sec. 881.)

Inasmuch as the veto of the Chief Executive is only a qualified negative, and a law may be passed, notwithstanding the Executive disapproval, it appears that the veto within itself is rather in the nature of a mere appeal to the Legislature and a suggestion to that body for a revision of its own judgment. In other words, the effect of a veto is a motion for reconsideration upon the part of the Chief Executive, which, if overruled by a sufficient number of members of each House, the measure becomes the law, notwithstanding the Executive dis-

approval. (Storey on Constitution, Sec. 888.)

It appears from the foregoing that in the approval or disapproval of laws the Governor is a component part of the Legislature and that his act in vetoing a measure is purely a legislative act.

Cooley on Constitutional Limitations, p. 184.

Fulmore vs. Lane, 140 S. W., 412.

Rules of Construction.

It will appear from the foregoing that, in construing the veto of the Governor, we must construe it in the same manner and with the same purpose in view that we would a legislative act.

The following is a statement of the rules of construction which has been repeatedly approved by the Supreme Court of Texas, the rules referred to being stated briefly as follows:

"Among the most important of these rules are the maxims that the intention of the Legislature is to be deduced from the whole and every part of a statute, when considered and compared together; that the real intention, when ascertained, will prevail over the literal import of the terms; and that the reason and intent of the legislator will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction and absurdity; that when the words are not explicit the intention is to be collected from the occasion and necessity of the law, and from the mischief and objects and remedy in view; and the intention is to be presumed according to what is consonant to reason and good discretion. It is another established rule that all acts in *pari materia* are to be taken together, as if they were one law, and that if it can be gathered from a subsequent statute, in *pari materia*, what meaning the Legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.

"These and other rules by which the sages of the law have been guided in seeking for the intention of the law-giver have been accumulated by the experience, and ratified by the approbation of ages."

Cannon vs. Vaughan, 12 Texas, 399.

Fulmore vs. Lane, 140 S. W., 419.

It is also an elementary rule of construction, and one directly applicable, and which must be observed in this particular instance, that we should not, un-

less required to do so, give such a construction to the Governor's veto as would necessarily occasion great public and private mischief, but a construction will be preferred which will occasion neither, unless the latter would do violence to a well settled rule of law.

Fulmore vs. Lane, 140 S. W., 419.

"When the meaning of the statute is doubtful, it is proper to recur to the history of the enactment to aid the construction, and, when the words are not explicit, the intention is to be collected from the occasion and necessity of the law and from the mischief and object and remedy in view."

Farmer vs. Shaw, 93 Texas, 438.

Wallraven vs. Farmers' National Bank, 96 Texas, 331.

Ross vs. Terrell, 99 Texas, 502.

"It is indispensable to a correct understanding of a statute to inquire first what is the subject of it, what object is intended to be accomplished by it. When the subject matter is once clearly ascertained and its general intent, a key is found to all its intricacies. General words may be restrained to it and those of narrower import may be extended to express it to effectuate that intent. When the intention can be collected from the statute, words may be modified, altered or supplied so as to obviate any repugnancy or inconsistency with such intention. Thus in the construction of a temporary appropriation act the presumption is that any special provisions of a general character therein contained are intended to be restricted in their operation to the subject matter of the act, and not permanent regulations, unless the intention of making them so is clearly expressed."

(Lewis' Sutherland on Statutory Construction, Sec. 347.)

"The intention of the Legislature being ascertained with reasonable certainty, words may be supplied in the statute so as to give it effect and avoid any repugnancy or inconsistency with such intention."

(Sutherland, Sec. 382; Talbot vs. Silver Bow County, 139 U. S., 438.)

"One Word Substituted for Another.

"The Constitution of Illinois provides for the division of counties into not more than three classes according to population, for the purpose of regulating the compensation of county officers. In 1872 an act was passed concerning fees and salaries, which by Section 13 divided counties into three classes: first, those

having not exceeding 20,000 population; second, those having 20,000 and not exceeding 70,000; third, those exceeding 70,000. Section 33 provided for the fees of the clerk of the Circuit Court 'in counties having a population exceeding 70,000.' In 1883 Section 13 was amended so as to make the classes (1) not exceeding 25,000, (2) 25,000 and not exceeding 100,000, and (3) exceeding 100,000. Section 33 remained unchanged until 1893, when it was amended and reenacted so as to change the fees but continuing the words, 'in counties having a population exceeding 70,000.' This amendment was claimed to be void because it made a fourth class of counties in violation of the Constitution. Section 33 was preceded in the original statute by a subheading as follows: 'Fees and compensation of clerks of courts of record, except in probate matters, in counties of the third class.' It was held, considering the subtitle and the whole act, that Section 33 was intended to apply to counties of the third class and that the words 'one hundred thousand' should be substituted for the words 'seventy thousand' in the section. The court says: 'The title should have its due share of consideration in determining the intention of the Legislature, and clearly shows, when taken in connection with the clause hereinafter referred to, that the Legislature made a mistake, when it passed the amendment of 1893, in not substituting the words 'one hundred' for and in place of the word 'seventy,' so that the first clause in the section should have read: 'in counties having a population exceeding one hundred thousand inhabitants.' It is manifest that the thing within the letter, to wit: 'seventy thousand,' is not within the statute because not within the intention, while the thing within the intention, to wit: 'one hundred thousand,' is within the statute, though not within the letter.'

(Sutherland, Sec. 383; *People vs. Gault*, 149 Ill., 39.)

"Where a word or phrase in a statute would make the clause in which it occurs unintelligible, the word may be eliminated and the clause read without it."

(Sutherland, Sec. 384.)

All the several rules of construction, to which we have made reference, are general and well known rules constantly applied by the courts in the interpretation of laws and written instruments. They are a part of the tools of machinery of those whose duty it is to ascer-

tain the intent and meaning of written laws. They are in fact as much a part of the laws themselves as legislative enactments, and their disregard ordinarily leads to confusion, and a wrong construction of the subject matter under consideration. Of course, the whole purpose of the courts in laying down these rules of construction has been to enable one to understand the meaning and intent of the law under review and the rules should not be used for any other purpose, and in considering the matter before us we should bear in mind that the rules of construction are to be used only for the purpose of determining what was intended by the Legislature.

The Bill as Passed by the Legislature.

We will not undertake to set out in detail the appropriation bill as passed by the Legislature, nor even that particular part of the same which had reference only to the Attorney General's Department, but we will take up in a general way the entire appropriation bill and that part of same making the appropriations for the Attorney General's Department sufficiently to understand the intention and purpose of the Legislature in passing the measure.

In the first place, the Regular Session of the Thirty-second Legislature met in January, 1911, but after remaining in session some two months adjourned without passing a general appropriation bill for the support of the State government for the two years beginning September 1, 1911. Afterwards, in July, 1911, the Governor of the State called the Legislature together in extra session by a proclamation dated Austin, Texas, June 20, 1911, in which he called the Legislature together in special session to meet on Monday, July 31, 1911. In this call the Governor said, among other things:

"An emergency having arisen by reason of the fact that the Regular Session of the Legislature adjourned without making appropriations for the support of the State government and for the public service for the fiscal years beginning September 1, 1911, and September 1, 1912, etc., * * * therefore, an extraordinary session of the Thirty-second Legislature is hereby called, for the date above indicated, for the following purposes, to wit: (1) To make appropriations for the support of the State government and for the public service for the fiscal years beginning September 1, 1911, and September 1, 1912. * * *"

Upon the convening of the Legislature

it passed, among other measures, what was known as Free Conference Committee substitute for Senate bill No. 3, which is now Chapter 3 of the General Laws passed by the First Called Session of the Thirty-second Legislature. The caption of this bill is as follows:

"An Act making appropriations for the support of the State government for two years, beginning September 1, 1911, and ending August 31, 1913, and for other purposes, and prescribing certain regulations and restrictions in respect thereto; to make additional appropriations for the support of the State government for the year ending August 31, 1911, and to pay various miscellaneous claims against the State, and declaring an emergency."

In Section 1 of the bill is found the following:

"Section 1. That the following sums of money, or so much thereof as may be necessary, be, and the same are hereby appropriated out of any money in the State Treasury not otherwise appropriated for the support of the State government from September 1, 1911, to August 31, 1913, and for other purposes, etc."

Following the foregoing language in Section 1, after various and sundry provisions, we find the appropriations set out for each of the several departments of the State government. The appropriation for each department throughout the bill is followed by language in substance as follows:

"Provided, that the amounts herein appropriated for each item, as stated herein, and no more, shall be paid out of the general revenue for the..... Department during the fiscal years beginning September 1, 1911, and ending August 31, 1913, and no surplus shall be diverted from one account to another."

The usual method of setting out an appropriation throughout the bill is to establish two columns; at the top of which two columns are the words, "for the years ending," and then before the first column is found "August 31, 1912," and before the second column, "August 31, 1913." Then follows a specification of the various items of each appropriation with the amount for the year under each of the columns aforesaid. The following extract from the appropriation for the executive office will illustrate this arrangement:

Executive Office.

For the Years Ending
Aug. 31, 1912. Aug. 31, 1913.

Salary of Governor..	\$4,000 00	\$4,000 00
Salary of private secretary	2,400 00	2,400 00
Salaries of two stenographers	2,400 00	2,400 00
Salary of porter...	480 00	480 00

On page 62 of the appropriation bill referred to is found the following:

"Provided, that any portion of the appropriations made herein for the year ending August 31, 1911, for maintenance and support, the erection, remodeling or equipment, for repairs of buildings, or for any institution of this State for which appropriations have been made herein which remain unexpended at the end of said fiscal year, shall be available, and may be used for the year ending August 31, 1913."

The bill also on the same page provides:

"Provided, that the Governor, in case of any extraordinary emergency, may authorize a deficiency for such purpose or purposes which could not have been anticipated or provided for by the Legislature. This provision shall apply to all State institutions and departments. All money appropriated by this act shall remain in the State Treasury and be paid out only as it is expended or as the necessity or emergency may require, etc."

So it appears conclusively from the above and foregoing extracts of the general appropriation bill that the undoubted purpose of the Legislature was to make an appropriation for the support of the State government for a period of two years. The Attorney General's Department, of course, was one of the departments of the State government and an appropriation having been made for it within the terms of this identical bill, it will be presumed that the Legislature intended also that the appropriation made for that department should be for two years, unless it clearly appears that such was not the intention of the Legislature. This proposition is too plain to merit discussion, but this interpretation is one not only consistent with common sense, but is a conclusion consonant with the rules of construction heretofore invoked by us.

Intention of the Legislature.

Having determined in the preceding

section of this opinion that the general intention of the Legislature was to make an appropriation for the support of the State government for a period of two years, including within this intention the Attorney General's Department, we will now examine the appropriation for that department and see if there is anything within the appropriation itself contrary to the general intention of the Legislature.

The appropriation made for the Attorney General's Department was somewhat different in its arrangement to that made for the other several departments of the State government in this way: That the appropriation was not itemized and embraced sundry directions not ordinarily embraced within one of the departmental appropriations. As originally drawn and passed by the Legislature it was in the following form:

"Attorney General's Department.

"For the support and maintenance of the Attorney General's Department, including postage, stationery, telegrams, telephones, furniture, repairs, express, typewriters and fittings, contingent expenses, costs in civil cases in which the State of Texas or any head of a department is a party; for the actual traveling expenses and hotel bills incurred by the Attorney General or any of his assistants or employes in giving attention to the business of the State elsewhere than in the city of Austin; for depositions and procuring evidence and documents to be used in civil suits or contemplated suits wherein the State is a party; for law books and periodicals; for the payment of any and all expenses incident to and connected with the administration of the duties of the Attorney General's office; for the enforcement of any and all laws, wherein such duty devolves upon the Attorney General; for the payment of any and all expenses in bringing, prosecuting and defending suits; for the payment of the salary and maximum fees provided by the Constitution for the Attorney General, and for the payment of the salaries and compensation of his assistants and employes and other help deemed by the Attorney General to be necessary to carry on the work of the Attorney General's Department, there is hereby appropriated the sum of eighty-three thousand and one hundred and sixty (\$83,160) dollars, to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the

Treasurer on warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, \$41,580; for the year ending August 31, 1913, \$41,580.

"For the guidance of the Attorney General in the expenditure of such sums out of the above item of appropriation of \$83,160 as may be necessary to properly conduct the business of his department, he is hereby empowered and authorized to employ such regular assistants as he may deem necessary, not to exceed seven in number at any one time, one of such assistants he shall designate as First Office Assistant Attorney General; and there may be expended out of the above item of appropriation a sum not exceeding \$20,000 per annum for the purpose of paying the salary of the Attorney General at \$2000 per annum and such fees as are prescribed by law, not to exceed \$2000 per annum, and for the purpose of paying the salaries of the assistants employed; provided, that no assistant shall receive more salary than \$2500 per annum; and the Attorney General shall have the power and authority to employ such stenographic clerks as he may deem necessary to carry on the work of the department, not to exceed four in number, one of whom shall be chief clerk and book-keeper; and there may be expended out of the above item of appropriation a sum not to exceed \$4000 per annum to pay the salaries of such stenographic clerks, provided, that no stenographic clerk shall receive more than \$1300 per annum; there may be employed one porter, who shall be paid out of the above item of appropriation a salary of \$480 per annum; there may be expended out of the above item of appropriation, for postage, stationery, telegrams, telephones, furniture, repairs, express, typewriters, and fittings and contingent expenses so much thereof as may be necessary, not to exceed the sum of \$1350 per annum. The remainder of the above item of appropriation, or so much thereof as may be deemed necessary by the Attorney General, shall be expended for costs in civil cases in which the State of Texas or any head of a department is a party; for the actual traveling expenses and hotel bills incurred by the Attorney General, or any of his assistants or employes, in giving attention to the business of the State elsewhere than in the city of Austin; for depositions and procuring evidence and documents to be used in civil suits, or contem-

plated suits, wherein the State is a party; for law books and periodicals; and for the enforcement of any and all laws of the State of Texas wherein that duty devolves upon the Attorney General, and for the payment of any and all expenses deemed necessary by the Attorney General in the prosecution and defense of all suits, and particularly for the enforcement of the anti-trust and corporation laws and for the employment of special counsel and other help when the same may be deemed necessary by the Attorney General, provided that the head of said department shall keep a record of the absences of the various employes and the reasons therefor, whether from sickness, vacation or on leave of absence, and that the record of such absence be incorporated in the report made biennially by the head of said department; provided, that the amount herein appropriated as stated herein, and no more, shall be paid out of the general revenue for the Attorney General's Department during the fiscal years beginning September 31, 1911, and ending August 31, 1913; and provided further, that no deficiency shall be created, nor shall any warrants be issued nor obligations incurred in excess of the amounts herein appropriated."

In the foregoing quotation of the original appropriation for the Attorney General's Department we have enclosed with blue pencil, or marked across with a blue pencil, those particular parts of the same which were so crossed out or marked by the Governor in his veto message, but for the purpose of this immediate discussion, we will consider the measure as originally passed by the Legislature, disregarding the veto or crossed out passages of the same.

For the purpose of a clearer discussion, we will disregard a considerable part of the provisions in the first portion of the appropriation and simply put down the essential features of the same, which when done, will determine the meaning of the appropriation with reference to the different items thereof, and when so done, will read as follows:

Attorney General's Department.

"For the support and maintenance of the Attorney General's Department * * * there is hereby appropriated eighty-three thousand and one hundred and sixty (\$83,160) dollars, to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the Treasurer on

warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, \$41,580; for the year ending August 31, 1913, \$41,580."

It is plain from the foregoing that the Legislature intended to appropriate \$83,160 for the support and maintenance of the Attorney General's Department for the two years ending August 31, 1912, and August 31, 1913, and that in the expenditure of this money a limitation was placed upon the amount which might be expended each year; that is to say, under the column headed "August 31, 1912," the amount which might be expended was \$41,580, and for the year ending "August 31, 1913," the same amount. In other words, it is plain from the foregoing that the figures placed under the year columns were placed there as matters of limitation on the amount which might be expended in any one year. Of course, naturally they were words of appropriation as well, but the previous language, to wit: "The sum of \$83,160," etc., were words of appropriation and limitation upon the amount which might be spent during the period of two years; but that they were words of appropriation for the two years there can be no reasonable doubt, because the itemized appropriation, as shown above, is followed by a lengthy statement as to the uses to which this sum of \$83,160 may be put by the Attorney General, and throughout the discussion of the uses to which it may be put the \$83,160 is treated as a single item in the appropriation bill. For instance, the bill stated: "For the guidance of the Attorney General in the expenditure of such sums of money out of the above item of appropriation of \$83,160"; * * * "and there may be expended out of the above item of appropriation a sum not exceeding \$20,000 per annum," etc. * * * "and there may be expended out of the above item of appropriation a sum not exceeding \$4000 per annum," etc. * * * "there may be employed one porter who shall be paid out of the above item of appropriation a salary of \$480 per annum"; "there may be expended out of the above item of appropriation for postage, stationery, telegrams, etc., not to exceed the sum of \$1350 per annum." etc. "The remainder of the above item of appropriation, or so much thereof as may be deemed necessary by the Attorney General," etc. "The amount herein appropriated, as stated herein, and no more, shall be paid out of the

general revenue for the Attorney General's Department during the fiscal years beginning September 31, 1911, and ending August 31, 1913," etc.

Upon examination, therefore, of the foregoing, it appears that it was the undoubted purpose of the Legislature to make an appropriation of \$83,160 for the support of the Attorney General's Department for a period of two years; that in the original measure the Legislature designated this appropriation as one item and throughout the bill so treated it, except that it limited the amount which might be spent during the year 1912, to \$41,580 and limited the amount that might be spent during 1913 to \$41,580; also that in the directions following the above, various limitations were placed on the amounts which might be expended, as for example, "exceeding \$20,000 per annum for the payment of the salary of the Attorney General and his assistants"; "an amount not exceeding \$4000 per annum for the payment of the salaries of the stenographic clerks" and "an amount not exceeding \$1350 per annum for the payment of contingent expenses, etc." In other words, this bill, as it originally passed the Legislature meant that \$83,160 was passed for the support of the Attorney General's Department for a period of two years and that various limitations were placed upon the department in the expenditure of this money. In the first place, the department could not expend exceeding one-half the amount the first year, and one-half the amount the second year, and it could not spend more than certain designated amounts for certain particular purposes in the course of either of the years, but it is clear and definite that there was nothing in this appropriation bill as originally passed by the Legislature which indicated in any manner that the Legislature did not intend to make an appropriation for the support and maintenance of the Attorney General's Department for a period of two years. The entire appropriation for this department is entirely consistent with the declared purpose and intention of the Legislature as expressed in the title of the measure and in the first section of the bill. The title of the act, of course, may be resorted to in aid of the construction of the act.

State vs. Delesdenier, 7 Texas, 76.

Byrnes vs. Sampson, 74 Texas, 79.

The Veto of the Governor.

The general appropriation bill under consideration, after its passage by both houses of the Legislature, was submitted to the Governor of the State for his consideration. The measure was considered by him and when he reached the appropriation for the Attorney General's Department he crossed out those parts of the foregoing copy of the appropriation which we have crossed out with a blue pencil, so that the appropriation when he returned the same to the Legislature read substantially as follows :

"Attorney General's Department.

"For the support and maintenance of the Attorney General's Department, including postage, etc. * * * There is hereby appropriated to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913, to be paid by the Treasurer on warrants drawn by the Comptroller upon vouchers approved by the Attorney General. For the year ending August 31, 1912, \$41,580."

The figures "\$41,580" were left under the column headed "August 31, 1912." The Governor also crossed out with his pen the directions as to the expenditure of the appropriation for the Attorney General's Department, but the Supreme Court held that this particular part of his veto was void, and therefore of no effect, so when considering the appropriation for the Attorney General's Department, the directions given remain intact and a part of the measure. The Supreme Court, however, held that the Governor's veto, in so far as his erasure of the words "the sum of \$83,160" and his erasure of the figures "\$41,580" appearing under the column headed August 31, 1913, were concerned, that the veto was valid; that the Governor had a right to make this character of veto and it is not left to us to determine whether or not such right existed. That question has been settled by the Supreme Court of this State.

Fulmore vs. Lane, 140 S. W., 411, 412.

The Intention of the Governor.

Inasmuch as the action of the Governor in making this veto, which the Supreme Court of the State has said that he had a right to make, is a legislative act, we must construe the veto by the same rules of construction that we would an act of the Legislature.

Authorities, supra.

Fulmore vs. Lane, 140 S. W., 412.

The Governor, in the exercise of his constitutional duty, filed with the Legislature his objections to the appropriation bill, specifying his objections to the appropriation for the Attorney General's Department. In his specifications of objections, among other things, he said:

"On page 30 the item in words as follows: 'The sum of \$83,160' is objected to and disapproved (1) because it is an excessive appropriation of the public funds for the purposes appropriated at a time when the burden of taxation upon the people of this State must necessarily be increased to supply deficits and pay the necessary expenses of government; (2) because the same is an evasion of the Constitution, etc."

"The item on page 30 of \$41,580 for the fiscal year ending August 31, 1913, is objected to and disapproved. The remaining item of \$41,580, as appropriated, is available for use until exhausted and may be applied during both of the fiscal years ending August 31, 1912, and August 31, 1913, etc."

(See the Governor's veto message as copied in Fulmore vs. Lane, 140 S. W., 416.)

It is therefore apparent from the foregoing that it was the intention and purpose of the Governor that the \$41,580 should be available for both the years 1912 and 1913. In one respect it is not a question of the interpretation put upon the measure passed by the Legislature by the Governor, but it is a specific expression of his own intention in vetoing those parts of the measure vetoed by him. In other words, it is an expression of his intention in performing a legislative act, and as such, it must be considered under the rules heretofore invoked in construing this bill and determining the final result.

Comparison of the Intention of the Legislature and the Governor.

From what we have said heretofore it appears that the Legislature of the State intended to make an appropriation for the Attorney General's Department for a period of two years; that the Governor in performing his legislative function in the exercise of the veto power, intended that the appropriation should be made for a period of two years for the support and maintenance of the Attorney General's Department. It there-

fore appears that the legislative department and the executive department, in exercising a legislative function, met in entire harmony as to their purpose and intention in enacting the appropriation bill for the Attorney General's Department. It matters not that there may be some ambiguities and contradictions in the appropriation, yet this intention is so manifest that the spirit of the act cannot be disregarded and surrendered to mere words which may have been inserted or left in the bill through inadvertence or mistake. We are not now construing this bill as an original proposition of law, but we are construing the measure after the Supreme Court of this State has definitely settled the question, that the Governor had the right to make the veto which he did make. We are not confronted with the proposition as to whether or not the Governor exercised the veto right in a constitutional way—that feature of the discussion has been settled by the Supreme Court of this State, and the only thing left us to determine is whether or not after the exercise of the veto power by the Governor in a constitutional way, the measure then is still capable of the construction that it was and is applicable to the support of the Attorney General's Department for two years? If it should be held that it is not so, then it is apparent that the Governor by his veto destroyed both his own and the legislative intention in the matter. If he did this, then it was manifestly a mistake and an error on his part, unintended and unintentional, and under the authority we have heretofore cited in Section 383 of Sutherland on Statutory Construction, in which it was held that where a manifest mistake had been made by the Legislature, that the court could supply the mistake, then we think it is conclusive that in this instance any mistake of the Legislature or the Governor in this matter may be rectified by the court and the bill made to read as it was manifestly intended that it should read by both the Legislature and the Governor.

The only thing in this bill which creates any doubt to the intention and purpose of the Legislature and the Governor is that the figures \$41,580 were left under the column headed August 31, 1912. If it be considered for a moment that the fact that this was so left is in contradiction of the express terms of the appropriation, to wit: to be expended during the two fiscal years ending Au-

gust 31, 1912, and August 31, 1913, then the rule undoubtedly is that the last named feature of the appropriation must control, that is to say, the words "to be expended during the two fiscal years ending August 31, 1912, and August 31, 1913," are found later in the provisions of this particular appropriation and must, under the decisions, be held to supersede the mere designation of the years at the top of the columns; in other words, the effect of the decisions is, that the provision which is latest in position supersedes the other.

Sutherland on Statutory Construction, Sec. 349, p. 668.

Farmers Bank vs. Hale, 59 N. Y., 53.

Weaver vs. Davidson county, 59 S. W., 1107.

In the case of the Farmers Bank vs. Hale, cited above, it was held that the second section of an act declared an intention directly opposed to the express provisions of the first section. The court in passing upon the question said:

"When different constructions may be put upon an act, one of which will accomplish the purpose of the Legislature and the other render it nugatory, the former should be adopted; but when the provisions of an act are such that to make it operative would violate the declared meaning of the Legislature, courts should be astute in construing it inoperative. The second question was treated in the nature of a proviso and controlling the previous section."

We append here a list of authorities in support of the proposition relied upon.

Parker vs. Ry. Co., 19 Pa. St. Rep., 219.

Gibbons vs. Brittenum, 56 Miss., 250.

Hand vs. Stapleton, 135 Ala., 162.

Ryan vs. The State, 5 Neb., 282.

In the case of Hand and others vs. Stapleton, cited above, the question was the construction of an act authorizing the removal of the county seat. It appeared from a consideration of the law under construction, that there was a contradiction between the last section of the act and the previous section. In passing upon the question, the Supreme Court of Alabama said:

"While it is true, as we have said, the first section of the act provides for the unconditional removal of the county seat, the tenth makes the removal conditional and must control. The rule is, as between conflicting sections of the same act, the last in the order of arrangement will control."

In the Gibbons case, supra, the matter under consideration was conflicting sections in the code of Mississippi. In passing upon the question, the court followed the rule here invoked, saying:

"Differences of time are to be disregarded in construing a code, if by disregarding them and looking at the work as whole harmony can thereby be produced; but if this proves impossible, if, after exhausting every scheme of reconciliation, there still remains a palpable and irrepressible conflict, we are compelled in the absence of anything else indicative of the legislative will, to determine it by adopting its latest declaration. * * *

"It is a well settled rule of interpretation that although the subsequent statute be not repugnant in all its provisions to a prior one, yet if the later statute was clearly intended to prescribe the only rule that should govern in the case provided for, it repeals the original act."

(Swann vs. Buck, 40 Miss., 308.)

"The sections of the code giving the widow one-half prescribed a rule of division of the estate of the intestate different from and repugnant to that which gives her the entire estate and being later in date, must repeal it. So fundamental is the canon of construction which makes the later expression overrule the former one that it is well settled when the later clauses of the same section or of the same will destroy preceding ones, with which they are in conflict. Potters Dwar. on Stat., 156, Note; 9 Bac. Ar. Tit. Stat. d., 277; Harrington vs. Trustees, 10 Wend., 550.

"If a later clause of a will qualified a preceding one, both can stand, but if the passages cannot be reconciled, the later must prevail, if it is equally relative to the testator's primary intention. O'Hara on Wills, Chap. 2, Sec. 11."

In the directions following the statement of the amount of money appropriated which the Governor crossed out, but which the Supreme Court has held he could not and did not veto, specific directions are found for the expenditure of money for the period of two years, as has been shown by several illustrations quoted therefrom, but which will appear more fully by reference to the bill itself, all showing that the funds specified as appropriated were to be spent during the period of two years. It will be found, too, that the period of time is written out in words and not specified

in figures as is specified at the column headings referred to and by which it has been claimed that the period of appropriation of this act is limited. It is a well known rule of construction that words when written out must prevail over figures when they have reference to the same subject matter. This is a rule followed generally in the commercial business, notably with banks in cashing checks and vouchers. It is equally a rule of law in construing written instruments. The general rule of construction is that where there is a conflict between words and figures, the words must prevail.

Weaver vs. Davidson Co., supra.
Warder vs. Millard, 8 Lea., 531.

Payne vs. Clark, 19 Mo., 152.

The rule we have here invoked with reference to the later clauses in the appropriation act controlling matter previously stated by the years as designated at the column headings, is a well-known rule in construction of laws, the rule being based upon the proposition that in the reading of a subject, matter near the close may be presumed to receive the last consideration, and if assented to, is a later conclusion. Slight circumstances preponderate when a question is at equi-pose. (Sutherland on Statutory Construction, Sec. 349, p. 669.)

Another Construction of the Veto.

We desire here to call your attention to a construction of veto messages, which has been approved, and which we think, in effect, is the same as the construction placed upon the veto of the Governor in this particular instance. It seems to us that the proper construction of the opinion of the Supreme Court in the case of Fulmore vs. Lane is, that while the Legislature made an appropriation of \$83,160 to the Attorney General's Department, that the Governor cut this appropriation in two, so that finally it was only \$41,580. This, as we have previously said, is undoubtedly the effect and holding of the Supreme Court of the State. There was, of course, but one appropriation for the Attorney General's Department, and the effect of the Governor's action was to cut this appropriation in half. So that by whatever principles of reason one may pursue, the final conclusion must be that the effect of the Governor's veto was to reduce the original appropriation by one-half. This veto has been approved

by the Supreme Court of this State, nor is this position without additional authority to support it.

In the case of Commonwealth vs. Barnett, 199 Pa., 162, the question under review was an appropriation bill which had been vetoed in part by the Governor. The Constitution of Pennsylvania is similar to our own, which authorizes the Governor to disapprove any item or items of any bill making appropriations of money, embracing distinct items, etc. The appropriation bill, when submitted to the Governor, made an appropriation of \$11,000,000 for two years for the support of the public schools of the commonwealth of Pennsylvania. The Governor approved the appropriation to the extent of ten million dollars and disapproved one million dollars thereof. The Governor of Pennsylvania, in passing upon this appropriation bill, said:

"I am compelled to reduce the appropriation to the common schools \$500,000 a year, amounting to \$1,000,000 in two years. * * *

"The authority of the Governor to disapprove part of an item is doubted, but several of my predecessors in office have established precedents by withholding their approval from part of an item and approving other parts of the same item. Following these precedents, and believing that the authority which confers the right to approve whole of an item necessarily includes the power to approve part of the same item, I, therefore, approve of so much of this item which appropriates \$5,000,000 annually, making \$10,000,000 for the two years beginning June 1, 1899, and withhold my approval from \$500,000 annually, making \$1,000,000 for the two school years beginning June 1, 1899."

The above and foregoing are substantially the facts upon which the opinion of the court in the case named is based. The court held that the Governor had the right to execute the veto as he did execute it and that the appropriation was reduced from \$11,000,000 to \$10,000,000.

In view of this authority and in view of the holding of the Supreme Court of this State, which in effect in this particular instance is the same as that of the Pennsylvania court, it would not be proper for this department to give any other interpretation to the effect of the Governor's veto.

Another Rule of Construction.

It has been noted that when the Governor vetoed that particular part of the appropriation bill referred to, he returned the bill to the Legislature; that the Legislature declined and refused to pass the original measure over the Governor's veto. Therefore, to that extent it made the Governor's action a part of its own action, or rather it approved the action of the Governor, after their attention had been directed to the matters pointed out in the Governor's veto message. Certainly it cannot be for a moment contended that the Legislature by acquiescing in the Governor's veto intended that there should be no appropriation for the Attorney General's Department for the year 1913. It must be presumed that the Legislature, and every member thereof, intended to perform his constitutional duty and to make an appropriation for the Attorney General's Department for two years. So, then, we have this rule of construction to enable us to determine the meaning of the appropriation bill as passed by the Legislature, as vetoed by the Governor, and as it finally existed when the Legislature declined to pass it over his veto. The rule referred to is the construction which the executive and legislative departments have placed upon a measure of their own enactment. It is an elementary rule that the courts will follow the construction of a statute which has been adopted by the Legislature, unless it is repugnant to sound rules of construction or the plain letter of the act.

Ex parte Rodriguez, 39 Texas, 705, 768.

Snyder vs. Compton, 87 Texas, 374.

"Where the construction of the Legislature occurred contemporaneously with the adoption of the Constitution and by those who had an opportunity to understand the intention of the instrument, it is not to be denied that a strong presumption exists that the construction rightly interprets the intention."

State vs. McAlister, 88 Texas, 284.

Bagby vs. Bateman, 50 Texas, 446.

Smith vs. McGaughey, 87 Texas, 61.

Holmes vs. State, 44 Texas, 631.

Cook vs. Brown, 45 Texas, 73.

By a review of the Supreme Court decisions of this State, the appropriation act and the Governor's veto has been before the Supreme Court of this

State, but this particular feature of it has not been construed, because it was not before the court. However, the Supreme Court of the State, in passing upon the question in the opinion of Judge Brown, 140 S. W., page 1082, said:

"We agree that the question whether the excess, if any, of the appropriation for 1911-1912 will be available in the succeeding year is not properly before this court; that question has not been decided, and no intimation to that effect was intended to be expressed in the former opinions. It is not the province of this court to decide upon rights which have not been presented to us, or upon questions which would in no way contribute to the proper determination of the issues presented here."

Then the court adds:

"The veto message being expressed in plain language, we must derive the meaning and effect of the veto from the language used by the Governor." (140 S. W., p. 1083.)

So it appears from the foregoing that the Supreme Court of the State has not passed upon the question here submitted, and we feel entirely at liberty to give that construction which appears to us to be reasonable and which from every consideration appears to have been the intention of the Legislature and of the Governor in performing their several duties in reference thereto. The construction we give is:

1. In harmony with the Governor's message calling the Legislature together to make an appropriation for two years.
2. It is in harmony with the caption of the appropriation bill.
3. It is in harmony with the first section of the bill.
4. It is in harmony with the bill as it passed the Legislature before reaching the Governor.
5. It is in harmony with the Governor's veto message which expressly stated the effect and purpose of the message.
6. It is in harmony with the express language of the appropriation bill after the same was vetoed.
7. It is in harmony with the necessities of the public service and with the belief that it was the intention of the Legislature to perform its constitutional duty.
8. It is not in conflict with the decision of the Supreme Court of this State.
9. It is in harmony with the opin-

ion of the Supreme Court of Pennsylvania in the Barnett case cited above.

10. It is in harmony with other items of appropriation in other Departments, as for instance under the appropriation for the Department of Insurance and Banking we find the following item:

"Office furniture, including shelving, one typewriter and calculating machine, to be expended in two years, \$1000"; the figures "\$1000" being placed in the column at the top of which is "for the years ending August 31, 1912."

In the Department of Education we find the following:

"For the support of public free schools for two years all the available free school fund arising from the interest or lease of school lands, interest on bonds, school taxes and all other sources of revenue to said fund," leaving the amount thereof blank as to the columns headed by the years ending August 31, 1912, and August 31, 1913.

So we might cite other instances of appropriations being made for two years embraced in a single item, although the item itself is placed under the 1912 column. In other words, the mere fact that the item of the appropriation is placed under either one or the other of the columns ought not to be the sole controlling factor in determining the purpose and intent of the Legislature, but is only to be considered as one of the factors, and if it be apparent from the bill that it was not intended as a limitation prohibiting the amount therein specified from being spent in another year, then, of course, it ought not to be so considered; and, under the rules of construction shown, the intent must be determined from the whole measure, not only from the language used, but from the purpose to be effectuated.

In Conclusion.

We, therefore, conclude, and we do not believe there is any other reasonable conclusion possible to be reached, that the unexpended portion of the appropriation made by the First Called Session of the Thirty-second Legislature for the Attorney General's Department is available for the year 1913, and that it was so intended to be by the Legislature and by the Governor in the performance of their several duties relative to the enactment of the law, and that any other construction would do violence to their intention and do violence to the presumption that the Legisla-

ture and the Governor intended to and did perform their constitutional duties.

Respectfully submitted,
C. M. CURETON,
First Office Assistant Attorney
General.

This opinion has been passed upon, approved by the Department in executive session, and is now ordered recorded.

B. F. LOONEY,
Attorney General.