



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL

EDMUND G. BROWN JR.
ATTORNEY GENERAL

October 9, 2009

Senator Jeff Denham
California Senate
State Capitol, Rm. 3076
Sacramento, California 95814

Assemblymember Alberto Torrico
Majority Leader, California Assembly
State Capitol
P.O. Box 942894
Sacramento, California 94249-0020

Re: Veto threats by Governor Schwarzenegger

Dear Senator Denham and Leader Torrico:

We are responding to your separate requests for an opinion on the question whether the Governor violates state or federal laws by threatening to veto legislation if the Legislature takes, or fails to take, action on specified bills.

We believe that the doctrine of separation-of-powers (Cal. Const., art. III, § 3) counsels against our inquiring into the legality of Governor Schwarzenegger's veto threats. Under our Constitution, the Governor's decision whether to veto legislation is an intrinsic part of the legislative process. (See Cal. Const., art. IV, § 10; see also *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1089 ["It is not coincidental that from the first Constitution of this state in 1849, and in the United States Constitution as well, the executive's power to veto legislation has appeared in the legislative article."])

We note that the Legislative Counsel addressed a similar issue last year when Senator Denham asked "whether the Governor would violate Section 15 of Article IV of the California Constitution or any other provision of law by stating that if the Legislature overrides his veto of a particular bill, he will veto all other bills presented by the Legislature." Legislative Counsel concluded "that the Governor would not violate Section 15 of Article IV of the California Constitution or any other provision of law by stating that if the Legislature overrides his veto of a particular bill, he will veto all other bills presented by the Legislature." (Ops. Cal. Legis. Counsel, No. 0828287 (Nov. 6, 2008).)



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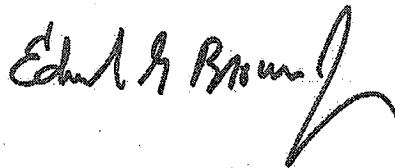
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In the 1800s, German President Otto von Bismark said: "There are two things you don't want to see being made—sausage and legislation." One legal authority has described how legislators play "a game of legislative 'chicken'" with their colleagues by holding up appropriations legislation. (Richard Lazarus, *Congressional Descent: The Demise of Deliberative Democracy in Environmental Law*, 94 Geo. L.J. 619, 635 (2006).) Another has written that "Senators regularly hold 'must' legislation hostage and extract a ransom in policy concessions." (Barbara Sinclair, *The Transformation of the U.S. Senate* 140 (1989).) Nevertheless, as the Supreme Court has cautioned, "it is extremely difficult [] to ascertain the motivation, or collection of different motivations, that lie behind a [decision on a] legislative enactment." (*Palmer v. Thompson* (1971) 403 U.S. 217, 224-225.)

This caution applies equally to inquiries concerning the Governor's motivations. The veto power of the Chief Executive has long been recognized as a powerful weapon for shaping policy, with at least one constitutional scholar suggesting that "the [only] major issue becomes the probability of override." (See, e.g., Charles Black, *Some Thoughts on the Veto*, 40 Law and Contemp. Prob. 87, 92 (1976))

Compromise in the rough-and-tumble legislative process is not achieved by doilies and tea.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund G. Brown, Jr.", with a stylized flourish at the end.

EDMUND G. BROWN, JR.