

*Termeteet v. Ngiwal State*, 5 ROP Intrm. 236 (1996)  
**SPEAKER KRISPIN TERMETEET  
and NGIWAL STATE LEGISLATURE,  
Appellants,**

v.

**NGIWAL STATE, Rep. by Governor August Ngirameketii,  
Appellee.**

CIVIL APPEAL NO. 33-95  
Civil Action No. 241-95

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: July 10, 1996

Counsel for Appellants: Martin Wolff

Counsel for Appellee: Carlos H. Salii

BEFORE: LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice;  
JANET HEALY WEEKS, Part-time Associate Justice.

MILLER, Justice:

This appeal concerns the constitutionality of a provision in Ngiwal State Public Law No. 6-006, which authorized appropriations for state expenditures. Section 6(b) of that law provided that no funds should be withdrawn from the State's bank account except by the joint signature of the Governor and the Speaker of the Kelulul a Kiuluul, the State Legislature. In an action brought by the Governor, the trial court declared this provision unconstitutional. The Speaker and the Legislature now appeal.<sup>1</sup>

Appellants advance essentially three arguments. First, on the merits, they contend that the trial court misapplied the separation of powers doctrine as it has been developed in United States cases. **1237** We read the trial court, however, to have concluded simply that the challenged provision was not consonant with the pertinent sections of the Ngiwal Constitution, which, as it found, "gives the Governor, not the legislature, the power to expend the funds for the purposes for which they were appropriated."

We agree. Although appellants stress that the joint signature provision was adopted in the

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<sup>1</sup> Appellee failed to file a brief and is therefore barred from presenting oral argument except as required by the Court. ROP App. Pro. R. 31(c). For their part, appellants requested that the case be decided on the basis of their brief. We agree that argument is not necessary.

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wake of a prior judgment that the Governor had made certain expenditures without appropriate legislative authorization, we believe that the provision is too broad. While it might provide a check against further unauthorized expenditures, it also has the potential of preventing the Governor from exercising his constitutional -- and constitutionally sole -- authority to make even authorized expenditures.<sup>2</sup>

Appellants next argue that section 6(b) was not severable from the remainder of Public Law 6-006, and the trial court was accordingly required to strike down the entire act and not just the challenged provision. It is not clear whether this argument was made to the trial court. In any event, we find that the issue of severability should not be addressed. Public Law 6-006, which set the budget for fiscal year 1995, expired at the end of that fiscal year, and indeed had already expired by the time of the trial court's decision. The trial court found that the controversy was nevertheless justiciable because, in light of the continuing dispute between the Governor and Legislature, it was likely to recur while evading review. We accept the trial court's conclusion, which has not been challenged by appellants, with respect to the validity of § 6(b) itself. Severability, however, is ultimately a matter of legislative intent,<sup>3</sup> which may vary from one piece of legislation to the next. To that extent, a determination of severability as to an enactment that has expired will not yield a definitive answer with respect to any subsequent enactment, and thus cannot be said to be likely to recur.<sup>4</sup> 1238 Accordingly, the question of the severability of § 6(b), unlike the question of the validity of § 6(b), is, in our view, a moot issue.

Finally, appellants contend that by signing Public Law 6-006 into law and by accepting his salary under it, the Governor is estopped from bringing the instant challenge. As to the signing of the bill by the Governor, we know of no authority supporting the estoppel rule claimed by appellants and do not believe we should adopt one now. As the U.S. Supreme Court has noted, "it is not uncommon for Presidents to approve legislation containing parts which are objectionable on constitutional grounds." *Immigration and Naturalization Service v. Chadha*, 103 S.Ct. 2764, 2779 n.13 (1983). Nevertheless, "[t]he assent of the Executive to a bill which contains a provision contrary to the Constitution does not shield it from judicial review." *Id.* In our view, it would exalt form over substance to hold that the Governor was required to veto Public Law 6-006 (and presumably await its override) in order to challenge the constitutionality of one of its provisions.

As to the Governor's asserted acceptance of his salary, "we doubt that plaintiffs are generally forbidden to challenge a statute simply because they are deriving some benefit from it," *Kadrmas v. Dickinson Public Schools*, 108 S.Ct. 2481, 2486 (1988), but find that, in any event,

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<sup>2</sup> Indeed, the trial court noted that no funds had been expended since the passage of the disputed provision.

<sup>3</sup> See generally 16 Am. Jur. 2d *Constitutional Law* § 265 (1979 ed.): "The question whether portions of a statute which are constitutional shall be upheld while other portions are eliminated as unconstitutional involves primarily the ascertainment of the intention of the legislature."

<sup>4</sup> Nor are legislators in need of guidance on this issue. It is always within their power to declare explicitly whether the provisions of any particular bill (or some of them) should or should not be severable.

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the factual basis for appellants' argument is absent from the record. The trial court having concluded that no money had been expended since the passage of Public Law 6-006, *see* n.2 *supra*, and appellants having waived the preparation of a trial transcript, they cannot argue that the Governor accepted any benefits under that act, much less that such acceptance estopped him from proceeding herein.

The judgment of the trial court is affirmed.