

Attorney General's Opinion

**Attorney General, Richard Blumenthal**

April 14, 1993

Edward C. Krawiecki, Jr.  
State Representative  
Minority Leader  
House of Representatives  
State Capitol  
Hartford, CT 06106

Dear Representative Krawiecki:

On August 21, 1991, the House of Representatives (by a vote of 75 to 73) and the Senate (by a vote of 18 to 18, tie broken by the Lieutenant Governor) adopted S.B. No. 2010. This legislation, as approved that day by the Governor, became 1991 Conn.Pub.Acts. No. 91-3 of the June, 1991 Special Session. Within 1991 Conn.Pub.Acts. No. 91-3 is § 30, a cap on spending by the General Assembly.<sup>1</sup>

On August 21, 1991 by vote margins greater than 75%, both the House of Representatives and the Senate adopted H.J.R. No. 205 which, among other things, proposed to add Section 18(a), a balanced budget provision and Section 18(b), a spending cap, to Article III of the Connecticut Constitution.<sup>2</sup> This Resolution passed by sufficient margins to be placed on the ballot in the November 3, 1992, election for possible adoption as a Constitutional Amendment. On November 25, 1992, the Secretary of the State certified that the electorate had adopted H.J.R. 205 as an amendment at the November 3, 1992, election.

By letter dated January 11, 1993 you ask one question regarding the effect of Art. III, § 18(a), the balanced budget amendment, on deficiency legislation authorized by Conn.Gen.Stat. § 2-36. You also ask four questions on the relationship between the statutory and constitutional spending caps set forth in Public Act 91-3, § 30 and Article III, § 18. We first address your question regarding § 18(a) and then will answer each of your questions as they relate to Art. III, § 18(b).

**I. Art. III, § 18(a), the Balanced Budget Amendment**

A portion of H.J.R. 205 which became, on approval of the voters, Art. III, Sec. 18(a) is known as the balanced budget amendment. See remarks of Representative McNally "[Section a] will require for the first time in our State Constitution a balanced budget" 34 H.Proc., Pt. 34, 1991 June Sp. Sess., p. 798, and remarks of Senator Herbst: "In Section A we talk about a balanced budget amendment." 34 S.Proc., Pt. 13, 1991 June Sp. Sess., p. 203.

You ask whether this amendment requiring a balanced budget in each fiscal year prohibits the passage of deficiency legislation after the start of the fiscal year. We answer that the balanced budget amendment limits the enactment of such legislation.

Deficiency legislation is governed by Conn.Gen.Stat. § 2-36. This section was re-enacted in § 33 of Public Act 91-3, on the same day final approval was given to Art. III, § 18(a). It

permits state agencies to request the Office of Policy and Management to submit to the General Assembly a bill paying "expenses of the current fiscal year." While the balanced budget amendment does not specifically prohibit deficiency appropriations, § 2-36 now must be construed within the constitutional boundaries set by the balanced budget amendment. That amendment limits "general budget expenditures" to the "estimated amount of revenue for such fiscal year." Deficiency legislation involves "expenditures" above the originally budgeted appropriations. Such legislation is, therefore, limited to the circumstance where there are additional revenues above the originally budgeted amount, through revised estimates or new enactments, to cover the expenditures.

## **II. Art. III, § 18(b), the Constitutional Spending Cap**

1. Your first question with respect to § 18(b) asks whether the Constitutional spending cap automatically repealed the statutory spending cap. We answer that the statutory cap remains in place until the General Assembly enacts the Constitutional definitions for § 18(b).

The general rule is that "ordinarily constitutional limitations upon the legislature are prospective in their operation and not intended to affect existing legislation...." Sutherland, Statutory Construction § 23.30. See also State ex rel. Cotter v. Leipner, 138 Conn. 153, 158 (1951); Ursuline Academy of Cleveland v. Board of Tax Appeals, 141 Ohio St. 563, 49 N.E.2d 674, 677 (1943); 16 C.J.S. "Constitutional Law" § 51.

We see nothing in the language of Art. III, § 18(b) or the constitutional history to indicate an intention to repeal the statutory spending cap set forth in 1991 Conn.Pub.Acts No. 91-3 § 30. Therefore, according to the legal principle outlined above, the statutory spending cap remains in place until the General Assembly enacts the Constitutional definitions for § 18(b).

2. Your second question asks whether, on the failure of the legislature to pass the definitional provisions of § 18(b) of Article III of the Constitution, Section 30 of Public Act 91-3 "becomes" the language of the Constitutional Amendment. We conclude that § 30 may become the definitional language of § 18(b) of Article III if it is specifically enacted as such.

Section 30 of Public Act 91-3 sets forth certain definitions applicable to the statutory spending cap. Conn. Const. Art. III, Section 18(b), also requires the General Assembly to define specific terms for the Constitutional spending cap which are similar to those contained in Public Act 91-3. According to the Constitutional Amendment, "[t]he enactment or amendment of such definitions shall require the vote of three-fifths of the members of each house of the general assembly." Id.

Section 30 was not passed with a three-fifths majority. Therefore, § 30 can serve to meet the constitutional mandate only if it is specifically enacted as such in accordance with the procedures of Art. III, § 18.

3. Your third question asks whether the legislature might amend § 30 of Public Act 91-3 by a majority vote. In keeping with our previous answers, we conclude that the General Assembly may not so act.

We have concluded that the statutory provision (§ 30) remains in place, and will so remain until replaced by the requisite Constitutional definitions. While the legislature cannot be

compelled to act in a particular fashion (Ursuline Academy, supra), Art. III, § 18(b) is now part of our Constitution. To continue to amend the statutory provision by less than a three-fifths majority would render the constitutional amendment a nullity. The statute was to be a temporary measure. 34 H.Proc., Pt. 34, June Sp. Sess., p. 805. (remarks of Rep. McNally, the House sponsor of H.J.R. 205). Amendments to § 30 of Public Act 91-3, therefore, cannot be made by a simple majority vote.

4. Your fourth question seeks to ascertain the effect of the General Assembly's amending § 30 of Public Act 91-3 by a vote in excess of three-fifths. You ask whether this amended language "becomes" the definitional language for Art. III, § 18(b). We conclude that such legislation would satisfy the procedural requirements of § 18(b). The Supreme Court has stated that "[W]here a new provision is to be substituted for an existing one, whether the new takes the form of a direct enactment, with repeal of the old, or of an amendment substituting the new for the old is ordinarily wholly immaterial, depending upon the preference of the draftsman of the act." Simborski v. Wheeler, 121 Conn. 195, 200 (1937).

We hope that we have sufficiently answered your questions.

Very truly yours,

Richard Blumenthal  
Attorney General

Henry S. Cohn  
Assistant Attorney General

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<sup>1</sup> This section provides as follows:

Sec. 30 (NEW) The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. Any such declaration shall specify the nature of such emergency or circumstances and may provide that such proposed additional expenditures shall not be considered general budget expenditures for the current fiscal year for the purposes of determining general budget expenditures for the ensuing fiscal year and any act of the general assembly authorizing such expenditures may contain such provision. As used in this section, "increase in personal income" means the average of the annual increase in personal income in the state for each of the preceding five years according to United States Bureau of Economic Analysis data; "increase in inflation" means the increase in the consumer price index for urban consumers during the preceding twelve-month period, according to United States Bureau of Labor Statistics data; and "general budget expenditures" means expenditures from appropriated funds authorized by public or special act of the general assembly, provided (1) general budget expenditures shall not include expenditures for payment of the principal of and interest on bonds, notes or other evidences of indebtedness, expenditures pursuant to section 4-30a of the general statutes, or current or increased expenditures for statutory grants to distressed municipalities, provided such grants are in effect on July 1, 1991, and

(2) expenditures for the implementation of federal mandates or court orders shall not be considered general budget expenditures for the first fiscal year in which such expenditures are authorized, but shall be considered general budget expenditures for such year for the purposes of determining general budget expenditures for the ensuing fiscal year. As used in this section "federal mandates" means those programs or services in which the state must participate, or in which the state participated on July 1, 1991, and in which the state must meet federal entitlement and eligibility criteria in order to receive federal reimbursement, provided expenditures for program or service components which are optional under federal law or regulation shall be considered general budget expenditures. (This section is now codified as Conn.Gen.Stat. § 2-33a).

<sup>2</sup> HJR 205(b), now Article III, Sections 18(a) and 18(b), provide as follows:

Sec. 18(a) provides: "The amount of general budget expenditures authorized for any fiscal year shall not exceed the estimated amount of revenue for such fiscal year."

(b) The general assembly shall not authorize an increase in general budget expenditures for any fiscal year above the amount of general budget expenditures authorized for the previous fiscal year by a percentage which exceeds the greater of the percentage increase in personal income or the percentage increase in inflation, unless the governor declares an emergency or the existence of extraordinary circumstances and at least three-fifths of the members of each house of the general assembly vote to exceed such limit for the purposes of such emergency or extraordinary circumstances. The general assembly shall by law define "increase in personal income", "increase in inflation" and "general budget expenditures" for the purposes of this section and may amend such definitions, from time to time, provided general budget expenditures shall not include expenditures for the payment of bonds, notes or other evidences of indebtedness. The enactment or amendment of such definitions shall require the vote of three-fifths of the members of each house of the general assembly.