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A HISTORY LESSON FOR GOVERNOR PERRY'S BENEFIT

By BILL HOBBY

Governor Rick Perry doesn't like the way higher education is funded. He wants to micromanage it.

He doesn't care that higher education is poorly funded. (Texas ranks 50th in percentage of high school graduates, 27th in college graduates.) The issue is neither higher education nor funding, issues about which he knows little and cares less.

The issue is the power of the Governor vs. the power of Legislature. The Texas Constitution gives the Governor the power of line item veto. The Governor can veto certain "items of appropriation" without vetoing the whole appropriations act. The line-item veto is almost meaningless because the Legislature can package items to keep a Governor from micromanaging.

Knowing that his plan will be unpopular, Governor Perry recently summoned the presidents of Texas public universities to his office and told them they would be in trouble if they criticized it.

The Governor wants to be able to veto "special items". Special items are frequently research and public service projects undertaken by the universities that reflect the special needs of the community the university serves. These items are "special" because they are not funded by the formulas that generate the money for teaching and apply only to a specific university.

At the University of Houston, for example, space exploration in conjunction with NASA and superconductivity to increase the efficiency of

power transmission are special items. So is the Center for Public Policy which does research on government issues, frequently with the support of the National Science Foundation or the City of Houston.

Special items are covered by a provision in the Education Code that appropriates money for higher education in a lump sum. In other words, the Governor would have to veto an entire university, not just a particular item.

Ninety years ago Governor James Ferguson did just that and was impeached because he did so. He vetoed the University of Texas appropriation because the university Regents wouldn't fire the president who wouldn't fire professors the Governor didn't like. Ferguson summoned Regent George Washington Littlefield and told him he would not veto the appropriation if President Robert E. Vinson resigned. President Vinson asked Littlefield how he should respond. Littlefield said "I would tell him to go to hell!"

Vinson said that the expression was "somewhat out of line with my own customary forms of expression" but asked Littlefield "to convey the substance of his statement to the Governor as my reply, leaving the exact verbiage to (Littlefield's) own discretion".

President Vinson also got divine guidance. Texas Episcopal Bishop George Herbert Kinsolving was closely associated with the University of Texas. As Vinson later told the story: "Just at that moment the ringing of the telephone interrupted the proceedings and the voice of Bishop Kinsolving came to my ears. 'No matter how I know it, but I know what is going on,' he said, 'but don't you resign.' That message had much to do with the decision then made."

Ferguson vetoed the appropriation that same afternoon and the University of Texas was in the ditch. But then a remarkable thing happened, probably unique in the history of public education. Two of the Regents pledged their fortunes by personally guaranteeing the university's budget of \$1,627,404. Littlefield and George Washington Brackenridge were long-time Regents who disliked each other intensely. They had served on opposite sides in the Civil War. They disagreed, often bitterly and personally, about almost everything except the welfare of the University. Both had given enormous amounts of money to the University. Various structures on the UT campus are named for them. Brackenridge also gave the city of San Antonio the park that bears his name.

The House then impeached Ferguson and the Senate removed him from office. (Accidentally or intentionally, Ferguson didn't veto a particular assistant math professor. That's micromanaging.)

Technically, Ferguson wasn't impeached because of the veto, but the veto was the proximate cause. There were plenty of other grounds for impeachment. Ferguson had been indicted for misusing public funds. He was selling pardons. But it was the University of Texas veto that really got him in trouble.

The Legislature reappropriated the money. My father, who had succeeded Ferguson as Governor, signed the bill and all was well. My father beat Ferguson in the next election by a large majority.

The University was out of the ditch and the Regents were off the hook.

Ninety years later, Governor Perry is pretty confused about the powers of the Governor and the powers of the Legislature. In power struggles between the Governor and the Legislature, the Legislature wins.

Maybe the Governor should just issue another illegal executive order.

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A UT history lesson

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In the pages of the Houston Chronicle a few years ago, the son of a Texas governor offered the current governor a history lesson regarding the balance of power between the governor and the Legislature when it comes to higher education. Recent testimony in hearings on the possible impeachment of a University of Texas regent would suggest that Gov. Rick Perry skipped class the day the article ran.

In his Chronicle opinion piece, former Lt. Gov. William P. Hobby Jr. recalled that nearly a century ago Gov. James E. "Pa" Ferguson got himself impeached, in large part because he vetoed the entire University of Texas appropriation. The governor was incensed because university regents refused to fire the president who refused to fire professors simply because Ferguson wanted to run them out of Austin.

As Hobby told the story, Ferguson summoned Regent George Washington Littlefield and told him he would hold off on his veto if UT President Robert E. Vinson resigned.

Vinson asked the regent how he should respond. Littlefield said, "I would tell him to go to hell!"

Vinson took Littlefield's advice, Ferguson vetoed the appropriation and then, in Hobby's words, "a remarkable thing happened, probably unique in the history of public education." Littlefield and another longtime regent, George Washington Brackenridge, pledged their fortunes by personally guaranteeing the university's budget of \$1,627,404.

The House then impeached the governor, and the Senate removed him from office. Ferguson's successor, William P. Hobby Sr., signed a bill reappropriating the university's money.

These days a regent seems dedicated, not to saving the university, but to bending it to his - and the governor's - will. Whether Wallace Hall Jr. of Dallas deserves to be removed from office is not for us to say at this point; hearings before the House Select Committee on Transparency in State Agency Operations will resume next month. Recent testimony would suggest, however, that the governor is unhappy with UT president Bill Powers for resisting his higher-education notions and may be using Hall as his spear carrier, with the intention of driving Powers out of office.

"That would be frowned on by the Legislature," said state Rep. Lyle Larson, a San Antonio Republican and committee member whose further comments suggested that he, unlike the governor, knows his Texas history: "And it would violate the law. One governor has been impeached for that reason."

Whether prodding Powers out of his UT Tower office is his "clear intent," to quote a former general counsel for the UT System, Hall has been a particularly bothersome and ham-handed university overseer. He has filed such voluminous records requests that the UT-Austin campus has had to hire five new full-time employees simply to process them.

His unrelenting requests and his demand that the requests be met in a few days' time has made it difficult for the university to protect private information.

Jim Pitts, the Waxahachie Republican who sponsored a resolution in June calling for articles of impeachment against Hall, has said the actions of the Dallas regent and some of his cohorts on the board amount to a "witch hunt" against Powers.

Hall insists he's merely doing his job as regent. We would suggest that he take a break from poring over the thousands of pages he's requested from UT-Austin and track down an account - bound to be more gripping - of a former governor's feud with the university.

In his Chronicle article, Bill Hobby offered a CliffsNotes version of the lesson Hall might learn: "In power struggles between the governor and the Legislature, the Legislature wins."