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STATE OFFICE BUILDING COMMISSION—HAS AUTHORITY TO CONSTRUCT ONE OFFICE BUILDING ONLY—HAS RECEIVED NO APPROPRIATIONS TO FULFILL ITS FUNCTION. SEC. 151.22, R.C. AM. H. B. NO. 1124, 103 G. A.

SYLLABUS:

The state Office Building Commission has the authority pursuant to Section 151.22, Revised Code, to construct one office building only but has received no appropriation under Amended House Bill No. 1124, of the 103rd General Assembly, or under any other statute, to fulfill its function.

Columbus, Ohio, December 8, 1959

Darold I. Greek, Chairman, State Office Building Commission
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which request reads as follows:

“Sections 151.21 to 151.23, inclusive, of the Revised Code relate to the creation and duties of a State Office Building Commission. The first sentence of Section 151.21 states:

“‘There is hereby created a commission composed of five members to acquire a site and to construct a new State Office Building.’

Section 151.22 provides in part:

“‘The commission created in Section 1 of this Act shall have the following powers and duties:

(a) The commission shall acquire a suitable site for the building of a new State Office Building. Such site shall be located in Franklin County.

(b) The commission shall have the power and duty to construct a new State Office Building upon the site * * *.

(c) The commission shall have the power and duty to acquire by purchase, gift or by condemnation proceedings the necessary land for the establishment of a new State Office Building.'

"House Bill No. 1124 enacted by the 103rd General Assembly, Regular Session, contains an appropriation item numbered 098, which reads:

" 'Construction of an office building or buildings in Franklin County, including site acquisition and including any modification of the Ohio Departments Building pertaining to adjacent new construction.'\$11,000,000.00.

"In view of the references in the statutes creating the commission to 'a new State Office Building' and the reference to 'an office building or buildings' in the appropriation act, the Commission would like to have your opinion on the following question:

"(1) Does the Commission have the authority to construct more than one office building?

"(2) If the Commission has the authority to construct more than one office building, may the buildings be located on different sites? In this connection, note the several references to 'site' in the statutes creating the commission and to 'site acquisition' in the appropriation act.

"(3) If the Commission may construct more than one building, may it construct a building for one department of the state government, for example for the Highway Department, or must any building which it constructs be for the purpose of housing several departments?"

You have requested answers to three questions and I shall take them up in the order in which you have asked them.

The first question is, whether the commission has the authority to construct more than one office building. Section 151.22 (b), Revised Code, quoted in your letter, specifically grants to the commission the power to build a new State Office Building. It must appear obvious, however, that the power of any government agency to carry out such an act as constructing an office building is necessarily dependent for its effectiveness on an appropriation of money to the agency to carry out its function. Thus,

latent in your question is the added question whether the General Assembly has appropriated any funds to the State Office Building Commission for the purposes of constructing such a building. As letter states, Amended House Bill No. 1124 of the 103rd General Assembly, which makes appropriations for capital improvements, appropriates certain money to the Department of Public Works as follows:

“098. Construction of an office building or buildings in Franklin County, including site acquisition and including any modification of the Ohio Departments Building pertaining to adjacent new construction . . . 11,000,000”

The issue then presented is, is this money appropriated to the State Office Building Commission or to the Department of Public Works for the creation of an office building or buildings?

I am familiar with Opinion No. 2070, Opinions of the Attorney General for 1958, issued by my predecessor, which held that an appropriation of \$15,000,000.00 to the Department of Public Works by the 102nd General Assembly was actually an appropriation to the State Office Building Commission for the stated purpose. While the circumstances which prompted that opinion are somewhat analogous to the present situation of the State Office Building Commission, there are certain important differences. The 1958 Opinion was based on three premises which are no longer operative. The first was that both the statutes creating a State Office Building Commission and appropriating \$15,000,000.00 were enacted by the same General Assembly within a few days of each other. The second was that Section 151.22 (c), Revised Code, limited the total cost of construction by the State Office Building Commission and the purchase price of the site to not more than \$15,000,000.00 and the amount appropriated by that same General Assembly for the purpose of providing an office building was exactly \$15,000,000.00. The third premise was that the appropriation was for the purpose of providing *an* office building which was the express purpose of the statutes creating the State Office Building Commission.

In the present situation none of these premises exist. The first premise no longer applies because the current appropriation was made two years subsequent to the enactment of the statutes creating the State Office Building Commission. The second premise is also inapplicable inasmuch as the General Assembly did not amend Section 151.22, Revised Code, which still provides that the total cost of construction and the purchase

price of the site by the State Office Building Commission shall not exceed \$15,000,000.00. In the 1959 appropriation enacted by the 103rd General Assembly in Amended House Bill No. 1124, *supra*, only \$11,000,000.00 was appropriated to the Department of Public Works for the construction and site acquisition of such an office building. Thus, the amount appropriated, unlike the situation in the 1957-1958 biennium, is not the same as the maximum which the State Office Building Commission is authorized to expend.

But perhaps the most material difference between the situation which confronted my predecessor and the present lies in the fact that the third premise is also not operative. Both Section 151.22 (a) and (b) and the 1957 appropriation act provided for the construction of a single building only. While the powers of the State Office Building Commission in this respect have not been altered, the current appropriation to the Department of Public Works is for construction of an office building *or buildings* and includes any modification of the present state office building relating to new construction. Section 151.22, Revised Code, gives the State Office Building Commission power to construct only *one* office building; Amended House Bill No. 1124 appropriates money for construction of *one or more* office buildings and also for the purpose of modifying the presently existing State Office Building. Inasmuch as the State Office Building Commission does not have the power to build more than one office building and does not have any express power to modify the present state office building, it appears evident that the recent appropriation was not intended for the State Office Building Commission.

Moreover, Amended House Bill No. 1124, *supra*, clearly appropriates the funds directly to the Department of Public Works thereby authorizing said Department to expend this money to construct one or more office buildings.

It might be argued that the General Assembly was cognizant of the opinion of my predecessor on this same point when it appropriated this money to the Department of Public Works and proceeded on the assumption that any appropriation to the Department of Public works would, in fact, be used by the State Office Building Commission as an adjunct of that Department. This argument is not persuasive, however, in view of the fact that the appropriation calls for activity not within the scope of the purposes for which the State Office Building Commission was created. The contention that the statutory purposes of the State Office Building

Commission were amended and enlarged by the passage of Amended House Bill No. 1124 cannot be sustained in light of the failure to mention the State Office Building Commission in the latter act. To say that the State Office Building Commission is authorized to use part of the current appropriation for the construction of one building, leaving the remainder for the Department of Public Works to be used in the construction of one or more buildings and the modification of the present building, would bog governmental processes in a hopeless quagmire, for no method has been proposed for the equitable distribution of these funds between the two agencies.

In light of this answer to your first question, I do not consider it necessary to answer your other two questions.

For these reasons it is my opinion, and your accordingly advised, that the State Office Building Commission has the authority pursuant to Section 151.22, Revised Code, to construct one office building only but has received no appropriation under Amended House Bill No. 1124, of the 103rd General Assembly, or under any other statute, to fulfill its function.

Respectfully,

MARK McELROY
Attorney General