

**OPINION NO. 79-104****Syllabus:**

The sums appropriated by Am. Sub. H.B. 656 may be expended to pay liabilities or obligations existing prior to November 30, 1979 and liabilities or obligations incurred between November 30, 1979 and the effective date of the Act.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, December 21, 1979**

I have before me your request for an interpretation of Am. Sub. H.B. No. 656. Your request states, in part, as follows:

The 113th General Assembly of the State of Ohio enacted Senate Bill No. 292, effective September 28, 1979, which appropriated monies in the state treasury to the credit of the Highway Operating Fund, the Highway Obligations Construction Fund, and the Highway Safety Fund. Senate Bill No. 292 expressly states that the sums appropriated "shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1979, nor incurred subsequent to November 30, 1979."

Thereafter, the General Assembly passed Amended Substitute House Bill No. 656 which was sent to the Governor on December 1, 1979 and subsequently filed with the Secretary of State without the Governor's signature. . . .

Due to the requirements set forth in [Ohio Constitution] Article II, Section 6, Am. Sub. H.B. No. 656 will not become effective until December 12, 1979. Therefore, the question arises whether, for the period from December 1, 1979 to December 12, 1979, there will be appropriated monies in the state treasury to the credit of the Department of Highway Safety and the Department of Transportation. See Article II, Section 22, Ohio Constitution (Appropriations).

In light of the foregoing facts and of the certification requirements as set forth in Section 131.17, Revised Code, I respectfully request your formal opinion on the following questions:

1. May the sums appropriated by Am. Sub. H.B. No. 656 be expended to pay liabilities or obligations existing prior to November 30, 1979?
2. May such appropriated sums be used to pay liabilities or obligations incurred subsequent to November 30, 1979 but before the effective date of Am. Sub. H.B. No. 656?

Am. Sub. H.B. No. 656, effective December 12, 1979, does not contain any statement expressly limiting the use of the sums appropriated therein to the payment of liabilities or deficiencies incurred after the effective date of the Act. To the contrary, the Act contains several statements indicative of a legislative intent to appropriate moneys for the payment of liabilities incurred prior to the effective date of the Act.

This legislative intent is first noted in the preamble of the Act which states in part as follows:

To amend sections 122.68, 153.08, 4501.01, 4501.02, 4503.04, 4507.24, 4507.50, 5525.03, and 5735.27, and to repeal section 5735.24 of the Revised Code to increase motor vehicle license taxes. . .to amend Sections 105 and 106 of Am. Sub. H.B. 204 of the 113th General Assembly. . . and to make appropriations for the department of transportation, the department of health, and the department of highway safety for the biennium beginning July 1, 1979, and ending June 30, 1981. (Emphasis added.)

Section 3 of the Act, which is that portion of the Act wherein specific appropriations are made, also conveys a legislative intent to appropriate sums for the biennium beginning July 1, 1979. Section 3 of the Act is structured as follows:

Section 3. All items in this section are hereby appropriated for the specific highway purpose designated. . . .

#### 770 DEPARTMENT OF TRANSPORTATION

Highway Operating Fund	<u>1979-1980</u>	<u>1980-1981</u>	<u>Biennium</u>
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#### 771 Division of Highways-Administrative Activities

101 Personal Services	\$ 11,498,163	\$11,717,206	\$23,215,369
201 Maintenance	\$4,537,437	\$4,502,205	\$ 9,039,642
301 Equipment	\$ 175,104	\$ 131,406	\$ 306,590

(Emphasis added.)

The structure of Section 3 of the Act mirrors that of Am. Sub. H.B. 204, the general biennial appropriation act. The significance of this structure is explained in the latter Act. Section 3 of Am. Sub. H.B. 204 states, in part, that "[f]or all appropriations made in this act, those in the first column are for fiscal year 1979-1980; those in the second column are for fiscal year 1980-1981; and those in the third column are for the Biennium." When making temporary appropriations, the General Assembly has indicated its intent to limit the period in which such appropriations may be used by varying the column headings. For example, in S.B. No. 292, Section 292, the column heading for the appropriations reads "July 1, 1979-November 30, 1979." Thus, the column headings in Am. Sub. H.B. 656 indicate that the sums appropriated in the first column may be expended to pay liabilities incurred at any time during fiscal year 1979-1980. The fiscal year is defined in R.C. 115.08 as that period beginning on the first day of July in each calendar year and ending the

thirtieth day of June in the succeeding calendar year.

In addition, the Act expressly authorizes the expenditure of the funds appropriated therein to pay liabilities incurred prior to the beginning of the current biennium. Section 22 of Am. Sub. H.B. 656 states that "[a]ny appropriation made to the Department of Transportation in Section 3 of this act, not otherwise restricted by law, is available to liquidate unforeseen liabilities arising from contractual agreements of prior years when said prior year encumbrance is insufficient." Accord, R.C. 131.33 (current appropriations may be used to discharge legal liabilities incurred in prior fiscal years).

Finally, any doubt as to the use of the sums appropriated in Am. Sub. H.B. 656 to pay liabilities incurred during the period in which the temporary appropriations made in Am. Sub. H.B. 204 as amended by S.B. 292 were in effect—that is, July 1, 1979 to November 30, 1979—is dispelled by Section 30 of the Act, which states as follows:

The appropriations made in this act include the five-month appropriations for fiscal year 1979-1980 made to the Department of Transportation, the Department of Highway Safety, and the Department of Health. . .in Am. Sub. H.B. 204 of the 113th General Assembly as amended by S.B. 292 of the 113th General Assembly.

In specific response to your questions, it is, therefore, my opinion, and you are advised, that the sums appropriated by Am. Sub. H.B. 656 may be expended to pay liabilities or obligations existing prior to November 30, 1979 and liabilities or obligations incurred between November 30, 1979 and the effective date of the Act.