

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2301.

RACING COMMISSION—SECTION 1079-2 G. C. AUTHORIZES MEMBERS ALLOWANCE OF “ACTUAL AND NECESSARY TRAVELING EXPENSES”—DEPARTMENT OF FINANCE—FUNCTION, ACCOUNTING AND AUDITING—NO POWER TO REFUSE APPROVAL OF VOUCHER UNLESS EXPENDITURE ILLEGAL.

SYLLABUS:

Inasmuch as Section 1079-2, General Code, authorizes the allowance for the members and secretary of the Racing Commission of “actual and necessary traveling expenses”, the Department of Finance does not have power to set up an arbitrary maximum amount for traveling expenses. The functions of the Department of Finance in connection with vouchers submitted or to be submitted for traveling expenses are those of accounting and auditing and the Department of Finance has no power to refuse to approve a voucher unless it finds that the expenditure was or would be illegal.

COLUMBUS, OHIO, April 13, 1938.

Ohio State Racing Commission, 507 Wyandotte Building, Columbus, Ohio.

GENTLEMEN:

This will acknowledge receipt of your communication which reads as follows:

“Amended substitute Senate Bill No. 372 was passed in June, 1933, and is known as ‘The Horse Racing Act’. In Section two of this Bill it provides, among other things, for the appointment of Commissioners and salaries they are to receive and also says that when on Commission business the Commissioners and Secretary would be allowed actual and necessary traveling expenses.

Some months ago our office received information through the Finance Department that this expense could not exceed \$3.50 which, of course, included hotel and meal expense. We are, of course, allowed railroad fare and mileage beside the \$3.50 limit. I know shortly after this ruling was made that your department rendered an opinion with reference to elective officers, held that this expense did not apply to them; at least I am advised that this was your opinion.

I am sure if you will now give our office an opinion on this section of the code as to whether or not the Commissioners and Secretary are limited to expense not to exceed \$3.50 per day, it will be very much appreciated."

The legislation to which you refer has been codified as Sections 1079-1 to 1079-14 of the General Code. Section 1079-2, after providing for the salaries of the various officers of the Racing Commission, makes the following provision as to expenses:

"When on commission business the commissioners and the secretary shall be allowed *actual and necessary traveling expenses*. Said salaries and expenses shall be paid in semi-monthly installments by the treasurer of state, out of 'The State Racing Commission Fund,' hereinafter created, on vouchers duly authorized by the commission and approved by the auditor of state." (Italics the writer's.)

Before an expense account for a state official is paid it must be approved by the Auditor of State and the Department of Finance.

The Auditor of State's duties in regard to approval of vouchers is set forth in Section 243 as follows:

"*The auditor of state shall examine each voucher presented to him, or claim for salary of an officer or employe of the state, or per diem and transportation of the commands of the national guard, or sundry claim allowed and appropriated for by the general assembly, and if he finds it to be a valid claim against the state and legally due, and that there is money in the state treasury duly appropriated to pay it and that all requirements of law have been complied with, he shall issue thereon a warrant on the treasurer of state for the amount found due, and file and preserve the invoice in his office. He shall draw no warrant on the treasurer of state for any claim unless he finds it legal, and that there is money in the treasury which has been duly appropriated to pay it.*" (Italics, the writer's.)

The duties which must be performed by the Auditor of State pursuant to this section have been interpreted by the Supreme Court in the case of *State, ex rel. vs. Tracy*, 129 O. S. 350, as follows: (Page 567.)

“If a voucher representing a valid claim against the state is presented to him concerning which all requirements of law have been complied with, and it is legally due, and there is money in the state treasury which has been duly appropriated to pay it then the law specifically enjoins on him as a duty resulting from his office, the issuance of a warrant on the treasurer of state in payment of the claim.”

On the authority of this case, I held in Opinion No. 487, issued April 19, 1937, as is set forth in the second sentence of the third branch of the syllabus:

“Under Section 243, General Code, the Auditor’s duty is confined to a determination of the legality of such claims and the question of whether there is money in the treasury duly appropriated to pay the same before issuing his warrant therefor.”

Another section relating to the duties of the Auditor of State in the approval of vouchers is Section 154-30, General Code, of which the following is the pertinent part:

“If any requirement of the department of finance respecting the submission of statements of proposed expenditures, or orders, invoices, claims, vouchers or payrolls is not complied with, or if any statement of proposed expenditure, or any order, invoice, claim, voucher or payroll is submitted to and disapproved in whole or in part by the department of finance, the department shall have authority to notify the auditor of state thereof, and such auditor shall not issue any warrants on the treasury in payment of such expenditure, claim or voucher.” (Italics, the writer’s.)

By virtue of this section the Auditor has no authority to pay a claim which has been disapproved by the Director of Finance. Of course, the action of the Department of Finance in disapproving a claim must be within the limitation of the authority conferred upon the department. The authority of the Department of Finance in regard to such matters is set forth in Section 154-28 as follows:

“The department of finance shall have power to exercise control over the financial transactions of all departments, offices and institutions, excepting the judicial and legislative departments, as follows:

(1) By prescribing and requiring the installation of a uniform system of accounting and reporting, as to accruals of revenue and expenditures necessary in certifying that funds are available and adequate to meet contracts and obligations.

(2) By prescribing and requiring uniform order and invoice forms and forms for financial reports and statements, and by requiring financial reports and statements.

(3) By requiring itemized statements of expenditures proposed for any specified future period to be submitted to the department, and *by approving or disapproving* all or any part of such proposed expenditures.

(4) By requiring orders, invoices, claims, vouchers or payrolls to be submitted to the department, where such submission is prescribed by law or where the governor shall deem such submission necessary, and by approving or disapproving such orders, invoices, claims, vouchers or payrolls.

(5) By supervising and examining accounts, the expenditures and receipts of public money and the disposition and use of public property, in connection with the administration of the state budget.

(6) By prescribing the manner of certifying that funds are available and adequate to meet contracts and obligations.

(7) By prescribing uniform rules governing forms of specifications, advertisements for proposals, opening of bids, making of awards and contracts, governing purchases of supplies and performance of work.

(8) By reporting to the attorney-general for such action, civil or criminal, as the attorney-general may deem necessary all facts showing illegal expenditures of the public money or misappropriation of public property.

(9) By prescribing rules and regulations for carrying into effect any or all of the other powers herein granted.

No provision of law authorizing or requiring any department, office or institution to keep accrual, encumbrance or cost accounts or to exercise fiscal management and control over or with respect to any institution, activity or function of the state shall be so construed as to exclude such department, office or institution from the control of the department of finance herein specified, but the power of the department of finance herein pro-

vided for shall apply and relate to such accounts and reports of all such departments, offices and institutions.” (Italics, the writer’s.)

You will note that the power of control of financial matters by the Department of Finance extends by virtue of the first paragraph of the quoted matter to “all departments, offices and institutions, excepting the judicial and legislative departments”. The Ohio State Racing Commission clearly comes within this description and, therefore, it is only necessary to determine whether the action taken by the Department of Finance, in ruling that it would disapprove claims in excess of \$3.50 per day, was in excess of the authority conferred upon the department by Section 154-28, *supra*.

The Supreme Court, in the case of *State, ex rel. vs. Herrick*, 107 O. S. 611, said at page 622:

“All of the provisions of Section 154-28 relate to the subject of accounting and auditing.”

This thought was also expressed in the second branch of the syllabus, which reads as follows:

“The essential functions of the department of finance are those of auditing, accounting, supervising public expenditures, and all functions incident thereto, but that department has no control over the policies of the highway department under the Administrative Code.”

In view of this declaration by the Supreme Court, I am impelled to the conclusion that the Department of Finance has no power to limit the expenditures of the Secretary and members of the Racing Commission for traveling expenses. The determination of what is “necessary expenses” is for the Commission; otherwise, the Department of Finance could regulate the activities of the Commission. If the Commission believes it “necessary” for one or all of its members to make a certain trip and the Department of Finance can prevent the payment of expenses therefor by declaring that the trip is not “necessary”, the Department of Finance would have a power of control, amounting almost to a veto, over the activities which the Commission thinks necessary for the proper performance of its duties. I am not of the opinion that the Legislature intended to place any such veto power in the Department of Finance. As authority for this proposition, I would like to call your attention to the following portion of the opinion in *State, ex rel. vs. Herrick*, *supra*, appearing at page 621:

"It is therefore more reasonable to conclude that the Governor is supreme over all the departments, in so far as is provided by law, and that each of the departments has its own special functions; the *essential policies of each being separate and distinct and free from control of the others.*" (Italics, the writer's).

In this case, it is true, the Court was considering two departments and not a commission such as the Racing Commission. However, I believe the principle enunciated by the Court would be equally applicable to commissions, such as the Racing Commission.

It is also noteworthy that this last quotation was cited with approval by the Supreme Court in the more recent case of *State ex rel. vs. Baker*, 112 O. S. 356, 359.

The Legislature itself has means for controlling the amount to be expended by your Commission for traveling expenses, inasmuch as the Commission is limited in such expenditures to the amount appropriated for the purpose by the General Assembly.

Of course, the foregoing must not be interpreted to mean that your Commission has authority to approve traveling expenses, no matter how unreasonable. On this point I would like to call your attention to the following which appeared in Opinion No. 487, *supra*, which opinion was directed to the Treasurer of State:

"There is no statute which expressly limits or defines any latitude of judgment exercised by you in passing upon the amount or sufficiency of traveling expenses of members of your office. The discretion to determine the reasonableness or unreasonableness of such expenses is in my judgment a matter of implied executive power necessarily vested in you as an independent constitutionally elected officer of the state government. *There is no doubt but that should you, in approving any item or items of expenditure for traveling expenses of your office, be guilty of a gross abuse of the discretion necessarily vested in you, the claim for the payment of such expenses would then and in that event become an illegal claim for which the Auditor would have no authority to issue his warrant, but in the absence of a clear showing of gross abuse of discretion on your part in such matters, I find no provision of law whereby the Auditor may be said to be authorized to substitute his judgment for yours as to what is or what is not a reasonable allowance for traveling expenses for your office.* It may be observed that the manner in which you exercise your discretion is your responsibility for

which you and not the Auditor of State must account to the electors of Ohio.”

I think that the italicized portion of the quotation would be equally applicable to your Commission and that under the circumstances there described, not only would the Auditor have no authority to issue his warrant, but it would be within the power of the Department of Finance to refuse to approve the voucher.

In conclusion, it is my opinion that the Department of Finance does not have the power to refuse to approve a voucher for traveling expenses of the secretary or members of your Commission simply because the voucher calls for a total expenditure in excess of \$3.50 per day.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2302.

APPROVAL--BONDS, CITY OF LORAIN, LORAIN COUNTY,
OHIO, \$170,000.00, DATED MARCH 15, 1938.

COLUMBUS, OHIO, April 13, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of City of Lorain, Lorain County, Ohio,
\$170,000.00.

I have examined the transcript relative to the above bonds purchased by you. These bonds comprise all of an issue of refunding bonds dated March 15, 1938, bearing interest at the rate of $2\frac{3}{4}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.