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UNEXPENDED BALANCES OF APPROPRIATIONS AND RE-APPROPRIATIONS MADE BY H. B. 1124 OF 103RD G. A. AGAINST WHICH ENCUMBRANCES WERE INCURRED ON OR BEFORE JUNE 30, 1961, ARE NOW AVAILABLE AND RE-APPROPRIATED FROM FUNDS FOR WHICH THEY WERE ORIGINALLY APPROPRIATED—HOUSE BILL 1124 OF 103RD G. A.—AM. H. B. NO. 390 OF 104TH G. A. (§9).

SYLLABUS:

Under Section 9 of Amended Substitute House Bill No. 390 of the 104th General Assembly, unexpended balances of all appropriations and reappropriations made by Amended House Bill No. 1124 of the 103rd General Assembly, against which encumbrances were incurred on or before June 30, 1961, are now reappropriated and available from the funds for which they were originally appropriated or reappropriated.

Columbus, Ohio, August 8, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion asks the following question:

“Have funds been appropriated and made available for the payment of liabilities for capital improvements in those cases where the liability of the State arises out of encumbrances incurred on or before June 30, 1961 and for which the 103rd General Assembly did appropriate and reappropriate funds by A.H.B. No. 1124 and with respect to which balances existed on June 30, 1961?”

Amended House Bill No. 1124, to which you refer, was enacted by the 103rd General Assembly, effective August 1, 1959, and made appropriations for capital improvements and other purposes. Under the provisions of the bill the appropriations were made for a period ending on June 30, 1961 (Section 4 of the bill). Your question is concerned with money appropriated by said Amended House Bill No. 1124 and encumbered before June 30, 1961.

Since no money may be expended without a specific appropriation made by law (Section 22 of Article II, Ohio Constitution), it remains to be seen whether money has been appropriated to pay the above-noted encumbrances; remembering that the original appropriation lapsed as of July 1, 1961. Pertinent in this regard is Amended Substitute House Bill No. 390 of the 104th General Assembly, effective July 9, 1961. Section 9 of this bill provides in part:

“Unexpended balances of all appropriations and reappropriations made by the 103rd General Assembly, against which liabilities have been lawfully incurred are, to the extent of such liabilities, hereby reappropriated from the funds from which they were originally appropriated or reappropriated, and made available for the purpose of discharging such liabilities for a period of six months, provided, however, that at the request of any department, office or institution, the department of finance may extend such six month period for such additional time as may be required. Such six month limitation shall not apply to appropriations made for capital improvements or made to the department of highways.

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Amended House Bill No. 1124, *supra*, contained appropriations and reappropriations *made by the 103rd General Assembly*, thus, unexpended balances of all appropriations and reappropriations made by said Amended House Bill No. 1124, against which liabilities have been lawfully incurred are, to the extent of such liabilities, reappropriated by Amended Substitute House Bill No. 390, *supra*.

Although I have no doubt as to the validity of the reappropriation above referred to, the language of Section 9, *supra*, is rather confusing as to the period of time during which the reappropriation will be in effect. Under the language used, there is a definite reappropriation of 103rd General Assembly appropriations and reappropriations. Then follows a limitation on the period during which the reappropriation will be available. That is, the reappropriation is available for a period of six months

except that the department of finance may extend the period beyond six months; but the six months *limitation* does not apply to appropriations made for capital improvements. The only logical interpretation of this language is that reappropriations for capital improvements are made and will be available for the life of Amended Substitute House Bill No. 390, *supra*, which will be until July 1, 1963, without any action by the department of finance.

In conclusion, it is my opinion and you are advised that under Section 9 of Amended Substitute House Bill No. 390 of the 104th General Assembly, unexpended balances of all appropriations and reappropriations made by Amended House Bill No. 1124 of the 103rd General Assembly, against which encumbrances were incurred on or before June 30, 1961, are now reappropriated and available from the funds for which they were originally appropriated or reappropriated.

Respectfully,
MARK McELROY
Attorney General