

631

CURRENT EXPENSE APPROPRIATION—AM. H. B. NO. 1051, 103RD G. A. BECAME EFFECTIVE ON APPROVAL OF GOVERNOR—§§2947.17, 2949.18, 2949.19 R.C.

SYLLABUS:

Amended House Bill No. 1051, 103rd General Assembly, including the subsidy item therein to pay criminal cost bills to the counties entitled thereto as provided in Sections 2949.17, 2949.18 and 2949.19, Revised Code, by reason of being an appropriation for the current expenses of the state within the meaning of Section 1d, Article II, Ohio Constitution, became effective as law on May 19, 1959 upon approval by the Governor on that date.

Columbus, Ohio, June 18, 1959

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

Dear Sir:

I have before me your request for my opinion, reading as follows:

“House Bill No. 1051 to make supplementary appropriations for the fiscal year ending June 30, 1959 was enacted into law by a vote of 110 Yeas in the House and no Nays and by 32 Yeas in the Senate and no Nays, and properly enrolled and signed by the Governor on May 19, 1959.

“Article II, Section 1d of the Ohio Constitution says:
‘Laws providing for tax levies, appropriations *for the current expenses* of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect.’ (Emphasis added)

“The Act provides for a subsidy to provide for criminal court costs totaling \$763,371.00. These criminal court costs have been due the several counties not indebted to the State under the agreements entered into under the provisions of Section 5739.24 of the Revised Code and cover criminal court costs extending back as far as 1943 to the present time. Our question is whether or not these supplementary payments for this subsidy are ‘current expenses of the State government’, which would admit of the Act being an appropriation measure for current expenses and going into effect immediately upon the approval of the Governor.

“An opinion, accordingly, is requested as to:

- “1. Whether or not the subsidy payments provided for by the Act are for current expenses.
- “2. Since these appropriations are only good for the fiscal year ending June 30, 1959, if you hold that this Act is not effective upon the signing and approval of the Governor, whether the State Auditor may lawfully encumber funds provided for by the enactment of House Bill No. 1051.

“An early reply will be appreciated.”

The subsidy here involved is provided, by the terms of the appropriation act in question, to meet the state’s obligation under the provisions of Section 2949.17, 2949.18 and 2949.19, Revised Code. These sections provide:

Section 2949.17

“The sheriff may take one guard for every two convicted felons to be transported to a penal institution. The trial judge may authorize a larger number of guards upon written application of the sheriff, in which case a transcript of the order of such judge shall be certified by the clerk of the court of common pleas under the seal of the court, and the sheriff shall deliver said order with such convict to the person in charge of such penal institution. In order to reimburse the county for the expenses of transportation, the state shall pay five cents a mile from the county seat to the state institution and return for the sheriff and each of the guards, and five cents a mile from the county seat to the state institution for each prisoner. The number of miles shall be computed by the usual route of travel.”

Section 2949.18

“When the clerk of the court of common pleas certifies on a cost bill that execution was issued under section 2949.15 of the Revised Code, and returned by the sheriff ‘no goods, chattels, lands, or tenements found whereon to levy,’ the person in charge of the penal institution to which the convicted felon was sentenced shall certify thereon the date on which the prisoner was received at the institution and the fees for transportation, whereupon the auditor of state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of state for such amount as he finds to be correct.”

Section 2949.19

“Upon the return of the writ against a convict issued under section 2949.15 of the Revised Code, if an amount of money has not been made sufficient for the payment of cost of conviction and no additional property is found whereon to levy, the clerk of the court of common pleas shall so certify to the auditor of state, under the seal of the court, with a statement of the total amount of costs, the amount paid, and the amount remaining unpaid. Such unpaid amount as the auditor of state finds to be correct, shall be paid by the state to the order of such clerk.”

In Section 22, Article II, Ohio Constitution, it is provided:

“No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years.”

This limitation makes impossible the efficacy of Section 2949.17 et seq., Revised Code, in the absence of biennial appropriations of funds to meet the obligations accruing thereunder, and it would appear that for some period of years there has been a failure to make such appropriations. This being so the expense of meeting such obligations is “current” in the sense that it now, *i.e.*, currently, is possible as a matter of law to pay them; and during the past sixteen years, absent the necessary appropriation, payment was not currently possible.

The provisions of Section 1d, Article II, *supra*, were under scrutiny in *State, ex rel. Janes v. Brown*, 112 Ohio St., 590, the syllabus in which reads in part:

“4. The phrase ‘current expenses,’ as used in Section 1d of Article II of the Constitution, in addition to including the expenses incident to the officering and maintaining of the state

government, includes the expense of keeping in repair and maintaining the property of the state government, and as applied to roads, includes the maintaining and repairing thereof as distinguished from new construction.”

In the opinion by Robinson, J. at p. 599 it was said :

“The phrase ‘current expenses’ does not seem to have been defined by this court, nor, indeed, satisfactorily defined by any court.

“17 Corpus Juris, 408, defines it thus :

‘Incidental expenses ; ordinary expenses ; running expenses ; any continuing, regular expenditures in connection with the carrying on of business ; continuing regular expenditures. As applied to a railroad, the term will include expense occasioned by repairs and the purchase of materials for the improvement of the road ; expenses incurred within a reasonable time.’

“The Supreme Court of the state of California, in *Babcock v. Goodrich*, 47 Cal., 488, held :

“‘Current expenses of the year,’ as used in a statute authorizing a county board of supervisors to levy a tax for the “current” expenses of the year,” should be construed to mean the “expenses of the current year.”’

“The Supreme Court of Missouri, in *State, ex rel. Egger v. Payne*, Collector of Revenue, 151 No., 663, 52 S. W., 412, held :

‘Current county expenditures do not mean county expenditures for years other than the year for which the taxes are levied.’

“The Supreme Court of Kansas, in *State, ex rel. Reed v. Comms. of Marion County*, 21 Kan., 419, held that the erection of county buildings is not ‘current expenses’ of a county, but is an extraordinary and exceptional expense. When permanent county buildings are once erected and completed, and benefits to the county are permanent and continuous.

“Other decisions of other courts, like the decisions above quoted, are definitions of the phrase as used in particular statutes, and are not helpful in the determination of the definition of the phrase as used in our Constitution.

“If the term ‘current expenses,’ as used in our Constitution, were to be interpreted as the same phrase was interpreted by the California court, it is difficult to conceive of a class of appropriations that would not come within the exception. We are of opinion that there was some purpose in its use in our Constitution.

“Our conception of the phrase, as used in our Constitution, is that ‘current expenses,’ in addition to including the expenses

incident to officering and maintaining the state government, includes the preserving in repair and maintaining of the property of the state government, and, as applied to roads, includes the maintaining and repairing thereof, as distinguished from new construction. We believe this is the commonly accepted definition of the phrase, and we hold that it was in this sense that the makers of the Constitution used it in Section 1d of Article II of the Constitution of Ohio.”

Although this reference to the California court’s interpretation of somewhat similar language indicates Judge Robinson’s view that the Ohio constitutional limitation was somewhat narrower than that of California, it is evident, where an item of accrued expense is concerned and the payment thereof has been deferred, the California provision is much narrower than our own, this by reason of the words “of the year” which are not used in the Ohio Constitution.

The ruling in the Janes case quite plainly distinguishes between (1) ordinary, or routine operating expenses, and (2) capital improvement expense, holding the former to be “current” but the latter not to be embraced in this term. In short, under this rule all so-called recurring expense items are deemed to be “current expenses.”

The court costs to which Sections 2949.17 *et seq.*, Revised Code, refer are clearly recurring expense items and not capital expense items. I conclude therefore, that the appropriation item for this subsidy became immediately effective upon signature of the bill by the Governor.

In passing I may note that the actual language of this item is somewhat garbled and does not too clearly indicate from what fund this appropriation is made. However, by referring to third sentence in Section 1 of the bill, and considering this in relation to the recapitulation at the end of the bill showing the sources from which the several items are appropriated, it become readily apparent that this item is appropriated from the General Revenue fund. I do not, therefore, regard this garbled language as presenting any problem.

In specific answer to your query, therefore, it is my opinion that Amended House Bill No. 1051, 103rd General Assembly, including the subsidy item therein to pay criminal cost bills to the counties entitled thereto as provided in Section 2949.17, 2949.18 and 2949.19, Revised Code, by reason of being an appropriation for the current expenses of the

state within the meaning of Section 1d, Article II, Ohio Constitution, became effective as law on May 19, 1959 upon approval by the Governor on that date.

Respectfully,

MARK McELROY

Attorney General