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ROTARY FUND—DEPARTMENT OF LIQUOR CONTROL AUTHORIZED TO PAY LAWFUL OBLIGATIONS OUT OF ROTARY FUND OF SUCH DEPARTMENT—REGARDLESS OF TIME OBLIGATION INCURRED—SECTION 6064-10 G. C.

SYLLABUS:

The department of liquor control is authorized to pay out of the rotary fund of such department established pursuant to Section 6064-10 of the General Code, lawful obligations of the department, regardless of the time when they were incurred.

Columbus, Ohio, June 6, 1945

Hon. Robert M. Sohngen, Director, Department of Liquor Control  
Columbus, Ohio

Dear Sir:

I have your letter of inquiry relative to the payment by your department of the sum of \$18,000 owed to the public employes retirement system for the year 1938. Your letter reads in part as follows:

“While this might be a proper charge to the Department and should be paid, we are at a loss to understand from what fund we could legally liquidate this obligation. We do not have an unexpended balance for the year 1938, neither does our present rotary fund permit us to pay obligations of this nature.

It is our opinion, therefore, that the matter should be placed with the Sundry Claims Board for disposition, or an appropriation made by the Legislature for such payment. We would appreciate your opinion on this matter.”

I believe there has been no question as to the existence, legality or amount of this claim, the only question being as to your right to pay it at this time out of moneys available for the operation of your department during the current year. The claim arises as I am informed, under Section 486-68a of the General Code, which relates to the payment of funds into the retirement fund by the state and its various political subdivisions

which come within the retirement law, of the employers' contributions to the fund. This section provides in part as follows :

"Beginning January 1, 1939, each county, municipality, park district, conservancy district, health district, and public library as employers, and beginning January 1, 1945, the state of Ohio as employer, and beginning October 1, 1943, each township as employer, shall pay to the employer's accumulation fund a certain per centum of the compensation of each employe member, to be known as the 'normal contribution', and a further per centum of the earnable compensation of each such member to be known as the 'deficiency contribution.' \* \* \* Beginning January 1, 1938, and until January 1, 1945, the state shall pay to the retirement board into such funds as the board may designate, the amount necessary to pay the state's share of the retirement allowance of such state employes who may be retired during that period, and any unexpended balance in such appropriation existing on December 31, 1944, shall lapse into the fund from which such moneys are appropriated."

The sum of \$18,000 in question, was the amount found by the board as necessary to pay the state's share of the retirement allowance of employes of your board who might be retired during the year 1938.

In the original act which created your board and defined its powers (115 O. L. pt. II, 118) codified as Section 6064-1 et seq., we find the provisions of Section 6064-10, relating to the custody and deposit of moneys coming into the hands of the department. This section in so far as pertinent, reads as follows :

"The department shall by regulation provide for *the custody, safekeeping, and deposit of all moneys received* by it or any of its employees or agents *on its behalf*; but the department shall pay to the treasurer of state all moneys, checks, and drafts received for the department or for the state, *at the time and in the manner* provided by sections 24, 24-3, and 24-4, of the General Code, subject to contingent withdrawal in the manner provided by section 24-5 of the General Code. For emergency or petty expenditures, if the director of finance approves, the auditor of state shall issue to the department of liquor control a warrant for petty cash, from the *funds in the custody* of the treasurer of state *for the use of the department*, in the amount recommended and approved by the director of finance. \* \* \* In any event (a) a sum equal to one dollar for each gallon of spirituous liquor sold by the department during the period covered by the payment shall be paid into the state treasury to the credit of the general revenue fund in the

manner provided by law; and (b) all moneys received from permit fees shall be so paid to the treasurer of state and a separate account thereof shall be kept by the department, the auditor of state, and the treasurer of state. The treasurer of state *shall be the custodian of all moneys* collected by the department *excepting such moneys as are required by the liquor control act to be paid by the department into the state treasury.* \* \* \*

The moneys *in the custody of the treasurer of state for the use of the department* of liquor control shall be known as the 'liquor control rotary fund' and shall be disbursed on the order of the auditor of state, in form prescribed by him, on the treasurer of state as custodian as aforesaid, pursuant to vouchers or invoices signed by the director of the department of liquor control, and approved by the director of finance as provided in section 154-28 of the General Code, in such form as the auditor of state shall prescribe. The cost of examination by state examiners of the bu-

reau of inspection and supervision of public offices rendered to the department of liquor control, shall be charged against the moneys in the custody of the treasurer of state for the use of the department, by the auditor of state on statements rendered quarterly for services rendered during the preceding quarter.

Whenever, in the judgment of the director of finance, the amount in the custody of the treasurer of state to the credit of the liquor control rotary fund is in excess of that needed to meet the maturing obligations of the department *and as working capital* for its further operations, the director of finance shall certify the amount of such excess to the department of liquor control and to the auditor of state, and the auditor of state shall thereupon issue an order on the treasurer of state as custodian of moneys collected under the liquor control act for the amount thereby determined, *to the general revenue fund of the state and a pay-in order in like amount, in the manner provided by law."*

(Emphasis added.)

This section as originally enacted differs in no important respect from the language contained in its present form as last amended in 118 O. L., 50. No change whatever has been made in the provisions as to the custody and use of the rotary fund, excepting that in the amendment found in 116 O. L., 522, vouchers or invoices issued and signed by the director were to be approved also by the director of finance. There was also added in that amendment a provision at the end of the section to the effect that the treasurer of state should withhold the money that might be paid into the general revenue fund for the sole use and purpose of paying old age pen-

sions when so appropriated by the legislature. This latter provision was stricken out by the amendment to the section found in 118 O. L., 50.

It will be observed that the department is to pay "to the treasurer of state all moneys received for the department or for the state at the time and in the manner provided by Sections 24, 24-3 and 24-4 of the General Code." The sentence preceding this requires the department by regulation to "provide for the custody, safekeeping and deposit of all moneys received by it or any of its employees or agents on its behalf." These provisions at once suggest the proposition that the law intends the payment to the treasurer of funds belonging to the department to be for a different purpose and to have a difference effect from the payment to the treasurer of funds which belong to the state. The former manifestly go into the *hands of the treasurer* of state for *custody only*, whereas moneys received *for the state* and paid to the treasurer of state manifestly go *into the treasury* of the state of Ohio. The next following provision is for an emergency or petty expenditure fund for the use of the department, and in respect to that it is provided that the auditor of state shall issue to the department of liquor control a warrant for petty cash "from the funds *in the custody of the treasurer* of state *for the use of the department.*" Plainly, the legislature did not contemplate that this petty cash fund was to be drawn from moneys *belonging to and in the treasury* of the state but as stated, from funds belonging to the department and in the custody of the treasurer.

The further provisions of the section will be found to bear out the same distinction. It is provided that the treasurer of state "shall be the *custodian* of all moneys collected by the department *excepting such moneys as are required* by the liquor control act *to be paid* by the department of liquor control *into the state treasury.*"

Note the further provision of this section that "a sum equal to one dollar for each gallon of spirituous liquor sold by the department during the period covered by the payment shall be paid *into the state treasury* to the credit of the general revenue fund." This is undoubtedly one of the payments which are referred to in the exception last above noted. The rotary fund mentioned in this section is referred to as being composed of "the moneys in the custody of the treasurer of state for the use of the department of liquor control" which are to be disbursed on the order of the

auditor issued to the treasurer of state pursuant to vouchers signed by the director of the department and approved by the director of finance. No reference is made to any appropriation, and since this rotary fund is not to go into the treasury of the state excepting in the amount and under the circumstances hereinafter set forth, it would seem to be a fund wholly under the control of the director and not requiring for its expenditure any appropriation by the legislature.

While Section 22 of Article II of the Constitution requires that no money shall be drawn from the treasury except in pursuance of a specific appropriation, that provision is by its terms limited to money *in the treasury* of the state, and has no application to a rotary fund such as is provided by Section 6064-10 supra. It is worth noting that the appropriation act now in effect appropriates all of the rotary fund revenues of your department without naming any amount and without limitation as to the expenditure of such revenues, with respect to the time when the obligation or liability was incurred.

In the latter portion of said Section 6064-10 I find a provision that whenever the amount of the rotary fund in the custody of the treasurer is determined by the director of finance to be "in excess of that needed to meet the maturing obligations of the department and as *working capital* for its further operations," the director of finance shall certify the amount of such excess to the department of liquor control and to the auditor of state, and the auditor of state shall thereupon issue an order on the treasurer of state as custodian of moneys collected under the liquor control act for the amount thereby determined in favor of the general revenue fund of the state. When this has been done, this money for the first time becomes a fund of the state and enters the state treasury.

In view of the reference in the opening sentence of this section to Sections 24, 24-3 and 24-4 of the General Code, it is necessary to note the provisions of those sections. Section 24, as it stood at the time of the enactment of the liquor control act, read as follows:

"On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid,

during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. Where tuitions and fees are paid to the officer or officers of any college, normal school or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conduction of said tuition fund and fees. At the end of each term of any college, normal school or university receiving state aid the officer or officers having in charge said tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and disposition of the same.

All sections and parts of sections of the General Code which provide for the custody, management and control of moneys arising from the payment to any state officer, state institution, department, board, commission, college, normal school or university receiving state aid of any fees, taxes, assessments, licenses, premiums, penalties, fines, costs, sales, rentals or other charges or indebtedness and which are inconsistent with the provisions of section 24 of the General Code as herein amended, are, to the extent of such inconsistency, hereby repealed.

Immediately upon the taking effect of this act all moneys, checks and drafts in the possession of any state officer, state institution, department, board, commission or institution received for the state or for any such state officer, department, board or commission from the sources mentioned in section 24 of the General Code, as herein amended, shall be paid into the state treasury in the manner provided by said section."

It had originally embodied only the first paragraph, but in 104 O. L. 178, it had been amended by adding the second and third paragraphs. These paragraphs would seem to be inconsistent with the plan set up in Section 6064-10 which we have been discussing. Section 6064-10, however, together with the other provisions of the liquor control act were enacted later as has already been stated, to wit, in 115 O. L., 118. These provisions, therefore, relating to the handling of the funds of the department of liquor control were plainly taken out of the provisions of Section 24, in so far as that section would appear to be inconsistent with the idea of a rotary fund.

However, Section 24 was again amended in 120 O. L., 476. No change whatever was made in the section by this amendment excepting the elimination of the words "normal school" following the word "college" as

they appeared several times in the act. This amendment was affected as a part of House Bill No. 217, which recodified and revised the laws of Ohio pertaining to the public schools and involved the enactment of a large number of new sections and the amendment or repeal of an equally large number. It is very plain that the only purpose of the legislature in touching Section 24 was to eliminate *normal schools* from its provisions.

It is a well established rule of construction that an act amending one or more sections of a statute should be considered in connection with other statutes which are in *pari materia*, and unless the intention to change the law as laid down in such related statutes is plain, the amended section should not be so construed as to accomplish that result. Rather, the amended section should be considered in the light of the obvious purpose of the amendment. This rule is laid down in Lewis' Sutherland Statutory Construction, (2d ed.) 237, as follows:

"So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal reenactment should have the effect of disturbing the whole body of statutes in *pari materia* which had been passed since the first enactment. There must be something in the nature of the new legislation to show such an intent with reasonable clearness. \* \* \* The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; \* \* \*"

The above statement was quoted with approval in *State, ex rel. Fulton*, 99 O. S., 169, 177. To like effect see *McKibben v. Lester*, 9 O. S., 627; *State, ex rel. v. Spiegel*, 91 O. S., 13; 37 O. Jur., 428.

Applying this rule it is quite evident that the legislature had no intention in making the slight amendment to Section 24, *supra*, to disturb, much less destroy the entire plan of operation of the Department of Liquor Control.

Sections 24-3 and 24-4 relate to "contingent receipts" by the several departments, which are of such nature that they "have not accrued to the state" but "may be subject to return to the sender." Those sections would apply to the disposition of permit fees collected, but the revenues of your department which go to make up the rotary fund, derived mainly from sales of commodities and intended to "meet the maturing obligations of the department and as working capital for its further operation" do not

fall within the class of "contingent receipts" and the sections last referred to would have no application to such revenues.

It is to be observed also that the opening sentence of Section 6064-10 *supra* provides merely that the moneys belonging to the *department* as well as to the *state* are to be paid to the treasurer of state *at the time* and *in the manner* specified in Section 24 et seq. of the General Code, and obviously, so far as your department's funds are concerned, such payment is for the purpose of custody only.

In the light of the foregoing, it is my opinion that you have the right to use the moneys in your rotary fund for the payment of the obligations of your department, regardless of when they were contracted, and that the payment of the sum due to the public employes retirement fund for the year 1938 may be paid out of that fund without the necessity of any specific appropriation.

Respectfully,

HUGH S. JENKINS

Attorney General