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EMERGENCY BOARD—HAS AUTHORITY TO MAKE GRANT OF FUNDS FROM APPROPRIATION MADE BY LEGISLATURE FOR USE AND PURPOSES OF BOARD—GRANT TO COMMISSIONERS OF SINKING FUND—PURPOSE TO MAKE PAYMENT OF CLAIMS FOR COMPENSATION FILED UNDER AMENDED SUBSTITUTE SENATE BILL 110, 98 GENERAL ASSEMBLY—UNITED STATES ARMED SERVICES.

SYLLABUS:

The Emergency Board has authority to make a grant of funds from the appropriation made by the legislature for the use and purposes of the Emergency Board, to the Commissioners of the Sinking Fund for the purpose of making payment of claims for compensation filed under the provisions of Amended Substitute Senate Bill No. 110, 98th General Assembly.

Columbus, Ohio, August 3, 1950

Hon. H. D. Defenbacher, Director, Department of Finance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Amended Substitute Senate Bill No. 110, providing for the payment of compensation by the State of Ohio to its residents who shall have served less than ninety days on active duty in the armed forces of the United States in World War II, was enacted as an emergency measure during the regular session of the 98th General Assembly.

“Said act contained the provision that all compensation payable under its provision and all expense of administering the provisions of the act shall be payable only out of funds appropriated to the Commissioners of the Sinking Fund for such purposes, and that no part of the funds in the state treasury to the credit of the World War II compensation fund shall be used to pay any compensation payable under the provisions of the act, or to pay any expense of administering the provisions of the act.

“However, the legislature failed to make any appropriation, in this act or in Amended House Bill No. 654, to the Commissioners of the Sinking Fund to meet the obligations created by this act.

"We respectfully request your opinion on the following question:

"Does the Emergency Board have the authority to make a grant of funds, from the appropriation made by the legislature in Amended House Bill No. 654, for the use and purpose of the Emergency Board, to the Commissioners of the Sinking Fund for the purpose of making payment of the claims for compensation filed under the provisions of Amended Substitute Senate Bill No. 110?"

The question you present requires first an examination of the powers of the Emergency Board as defined in Sections 2313, et seq., General Code. These sections read as follows:

Section 2313, General Code:

"In case of any deficiency in any of the appropriations for the expenses of an institution, department or commission of the state for any biennial period, or in case of an emergency requiring the expenditure of money not specifically provided by law, the trustees, managers, directors or superintendent of such institution, or the officers of such department or commission, may make application to the emergency board for authority to create obligations within the scope of the purpose for which such appropriations were made or to expend money not specifically provided for by law. Such applicant shall fully set forth to the secretary in writing the facts in connection with the case. As soon as can be done conveniently, the secretary shall arrange for a meeting of the board, and shall notify the applicant of the time and place of the meeting and request his presence. No authority to make such expenditures shall be granted with the approval of less than two members of the board, who shall sign it."

Section 2313-1, General Code:

"The written authority provided for in section 2313 shall specify the amount in which and the purposes for which obligations may be created as therein provided. It shall be filed with the auditor of state and he shall open an account in his office in accordance therewith for the payment of any obligation authorized as provided in section 2313. The applicant receiving such authority shall issue proper vouchers to the auditor of state, as provided by section two hundred and forty-four of the General Code. Upon receipt of such vouchers the auditor, if satisfied as provided in said section that the claim presented is due and payable, shall draw his warrant on the treasurer of state against any appropriation for the uses and purposes of the emergency board."

Section 2313-2, General Code:

“The General Assembly may provide at the time of making the appropriations for the expenses of the various institutions, commissions and departments of state a contingent appropriation for the uses and purposes of the emergency board. Such appropriation (unless otherwise specifically provided by law) shall be applied exclusively to the payment of deficiencies in other current appropriations as provided by sections 2312, 2313, 2313-1. Except as provided in said sections, no officer, board, commission or department of state shall have authority to create any deficiency, nor to incur any indebtedness on behalf of the state. The emergency board provided for in said sections may not in any biennial period authorize the expenditure of any sum or sums of money exceeding in the aggregate the amount appropriated for its uses and purposes as hereinbefore provided.”

Although the second sentence of Section 2313-2, General Code, clearly indicates that any appropriations by the Emergency Board shall be restricted “to payment of deficiencies in *other current appropriations*” (Emphasis added), it must be noted that Section 2313, General Code, was amended (109 Ohio Laws 105) subsequent to the enactment of Section 2313-2, (103 Ohio Laws 444) General Code, such amendment adding that provision relating to appropriations by the board to cover “an emergency requiring the expenditure of money not specifically provided by law * * *.” This situation is a proper one, therefore, for the application of the rule expressed in *State, ex rel. Guilbert v. Halliday*, 63 O. S. 165, so as to give full effect to Section 2313, General Code, as amended. The first branch of the syllabus in the *Guilbert* case reads as follows:

“In so far as two statutes are irreconcilable, effect must be given to the one which is the later.”

It is clear from the language of Sections 2313 and 2313-2, General Code, that the expression in the former “any deficiency in any of the appropriations” must be restricted so as to apply “exclusively to the payment of deficiencies in other current appropriations.” Accordingly, since there is actually no current appropriation to the Commissioners of the Sinking Fund for the compensation payments authorized by Amended Substitute Senate Bill No. 110, 98th General Assembly, it must necessarily follow that if the Emergency Board is authorized to make available any funds for the use of the Commissioners of the Sinking Fund in the instant case the authority for such action must be found in that language of Section 2313, General Code, which authorizes the board to appropriate

funds for use "in case of an emergency requiring the expenditure of funds not specifically provided by law."

A somewhat similar situation was considered by one of my predecessors in Opinions of the Attorney General for 1915, Vol. II, page 1744. In that case the legislature had authorized the expenditure of funds for the expenses of an administrative board but had failed to make a specific appropriation therefor. In considering whether or not that situation constituted an emergency within the meaning of Section 2313, General Code, the then Attorney General said at page 1746:

"If the constitutionality of this part of section 2313 can be sustained at all, it must be upon the basis of a rather narrow meaning of the word 'emergency,' for section 22 of article II of the constitution provides that

"No money shall be drawn from the state treasury except in pursuance of specific appropriations made by law."

and while an appropriation of a sum for contingencies related to the purposes for which appropriations were made may perhaps be justified as not constituting a delegation of legislative power, it is clear that a law committing to an administrative tribunal the authority, upon its own motion and in any and all classes of cases, to appropriate money for a purpose for which the general assembly has failed to appropriate anything would be an unconstitutional delegation of legislative power.

"I am, therefore, of the opinion that the word 'emergency' must be strictly construed, and as between two possible meanings thereof the narrower must be chosen, and one so broad as to do probable violence to the constitutional principles referred to must be rejected.

"The exact and primary meaning of the word 'emergency' denotes a sudden, unexpected happening. There is at least much less apparent conflict between the statute and the constitutional principle to which I have referred, if the former be so interpreted as to be limited to cases where the general assembly when in session failed to provide the money in question because the necessity therefor could not be foreseen at the time; or, stated conversely, cases in which the necessity requiring the expenditure of money did not exist when the legislature was in session and could not have been foreseen when the legislature acted.

"It is my opinion that the word 'emergency' must be so interpreted, and that such an interpretation, besides being required in order to save the statute from rejection on constitutional grounds, is the obvious and primary meaning thereof.

“It is my opinion, therefore, that any condition the existence of which could have been as readily seen and provided against when the legislature was in session as at the time the application was made to the emergency board, cannot constitute an ‘emergency’ within the meaning of section 2313.”

While I agree with the reasoning in this opinion as applicable to the precise situation considered therein, the facts in the case which you have described present a distinctly different problem.

This difference is observed in the fact that the legislature in enacting Amended Substitute Senate Bill No. 110, specifically declared the act to be an emergency measure. Section 2 of this act reads as follows :

“This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that immediate payment of compensation should be made to certain veterans and certain next of kin of deceased veterans of world war II who are not eligible for compensation under the provisions of section 2b of article VIII of the constitution of the state of Ohio. Therefore this act shall go into immediate effect.”

In a case where the legislature has specifically provided for the expenditure of funds in an act declared to be an emergency measure and has stated the reason for such emergency to lie in the necessity for immediate payment of such funds to the designated beneficiaries, it must necessarily follow that the situation so described by the legislature be considered an emergency, not only at the time of passage of such act but one which continues until it is remedied. The greater force is added to this view, I think, when it is considered that it is not the administrative board concerned but rather the legislature itself which has designated this situation as an emergency, so that there can be no ground for belief that such administrative board, in designating it as an emergency, is exercising legislative powers.

As to the second constitutional question involved, the necessity of a “specific appropriation made by law” as required by Article II, Section 22, Ohio Constitution, I perceive no particular difficulty in this case. It is noted that the legislature, in Amended House Bill No. 654, has appropriated certain funds for use by the Emergency Board for “All Purposes.” In view of the emergency expenditures clause in Section 2313, General Code, it must be assumed that some of such funds were intended by the

legislature to provide for emergency uses. Accordingly, when the legislature has by one law appropriated funds for expenditures for emergencies generally and, in the same session, in another law, has specifically designated and described a particular situation as an emergency, it is clear, in my opinion, that the constitutional requirements with respect to a "specific appropriation made by law" have been met in so far as expenditures in such particular situation are concerned.

Accordingly, and in specific answer to your question it is my opinion that the Emergency Board does have authority to make a grant of funds from the appropriation made by the legislature for the use and purposes of the Emergency Board, to the Commissioners of the Sinking Fund for the purpose of making payment of claims for compensation filed under the provisions of Amended Substitute Senate Bill No. 110.

Respectfully,

HERBERT S. DUFFY,
Attorney General.