

1145.

APPROPRIATION TO SCHOENBRUN COMMITTEE—CANNOT BE EXPENDED WITHOUT CONSENT OF CONTROLLING BOARD.

*SYLLABUS:*

1. *By the terms of the appropriation contained on page 166 of House Bill No. 502, 87th General Assembly, by which \$25,000 is appropriated to the Schoenbrun Committee for the purchase of lands, such appropriation is to be expended by a committee of five, two to be appointed by the president of the senate of the 87th General Assembly, two by the speaker of the house of representatives of the 87th General Assembly, and one by the governor, and not by the committee appointed under the provisions of House Bill No. 80, 86th General Assembly.*

2. *By virtue of the terms of Section 12 of the act to make general appropriations, passed by the 87th General Assembly (House Bill 502), no monies therein appropriated or reappropriated for the purchase of real estate, regardless of amount, may be expended without the consent and approval of the Controlling Board, evidenced by the consent of not less than four members entered on the minutes. Opinion No. 918, dated August 26, 1927, followed and approved.*

COLUMBUS, OHIO, October 14, 1927.

HON. ROBERT H. NUSSDORFER, *Secretary of Committee for Purchase of site of Village of Schoenbrun, Dover, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of October 12, 1927, which reads as follows:

“In accordance with the provisions of House Bill No. 80 of the 86th General Assembly providing for the acquisition of additional ground and for the preservation of the site of Schoenbrun, the following were appointed as members of the Committee:

J. E. Finefrock,  
Frank C. Wise,  
Earl R. Lewis,  
W. M. Shepherd,  
Robert H. Nussdorfer.

And said Committee met and organized by electing J. E. Finefrock, Chairman, and the undersigned, Secretary.

The Committee recommends the purchase of the Morris farm for the price of \$15,132.50. It obtained a written option executed by Mr. and Mrs. Morris, and I enclose it herewith. I also enclose a map of the property and an abstract of title.

The description of the property attached to the abstract and included in the option mentions the right of way of The Baltimore & Ohio Railroad. The option also mentions an oil and gas lease on the property. The option does not mention a right of way for electric pole line given to The Ohio Service Company. The property would have to be taken subject to that right of way. An exception or reservation in the deed would have to be made in favor of The Ohio Service Company.

With these exceptions, the property is clear. If you find it so and give the transaction your proper approval, the purchase can then be completed. Will you prepare the deed to be executed by the Morriszes?"

House Bill No. 80, passed by the 86th General Assembly on March 27, 1925, filed in the office of the Secretary of State on April 10, 1925, and effective on and after July 9, 1925, was an act entitled "An Act—To provide for the acquisition of additional ground for the preservation of the site of Schoenbrun." Sections 1 and 3 of this act read as follows:

Section 1. "That for the purpose of acquiring necessary additional ground in order to properly preserve the site of the village of Schoenbrun, situated in Goshen Township, Tuscarawas County, Ohio, a committee of five shall be appointed, two by the president of the Senate, two by the speaker of the House of Representatives, and one by the governor. That said committee when appointed, is authorized, in behalf of the state, to purchase for the state, the White tract consisting of about eight acres, and such other additional land adjoining the original site of the village of Schoenbrun as may be necessary to properly restore and preserve the historic landmarks of said settlement.

If in the judgment of the said committee it is necessary for the accomplishment of the purpose of this act, to acquire any real estate, right of way or easement, and the committee is unable to agree with the owner or owners thereof upon the price to be paid therefor, it may appropriate such property in the manner provided for the boards, trustees and managers of state institutions.

Such purchase and title to such lands shall be approved by the governor and the attorney general of the state before the same is accepted, and when accepted shall be conveyed to the State of Ohio, and the deed thereof shall be duly recorded and deposited with the Auditor of State."

Section 3. "That for the purpose of carrying out the provisions of this act, and defraying the expenses of the committee, there is hereby appropriated out of any monies in the state treasury, to the credit of the general revenue fund, and not otherwise appropriated, a sum not to exceed seventy-five hundred (\$7,500) dollars."

Since by the terms of Section 22, Article II of the Constitution of Ohio, "No appropriation shall be made for a longer period than two years," it is manifest that any unexpended balance of the appropriation made in Section 3 of House Bill No. 80, supra, has lapsed.

With reference to the purchase of the Morris farm referred to in your communication, your attention is directed to the appropriation contained on page 166 of House Bill No. 502 passed by the 87th General Assembly entitled "An Act—To make general appropriations," reading:

"SCHOENBRUN COMMITTEE

G Additions and Betterments—

G-1. Lands.....\$25,000.00

The above appropriation shall be expended by a committee of five, two to be appointed by the president of the senate, two by the speaker of the house of representatives and one by the governor. Said committee, when appointed, is authorized, in behalf of the state, to purchase for the state, the Morris farm, consisting of one hundred seventeen and one-half

acres, and such other additional land adjoining the original site of the village of Schoenbrun as may be necessary to properly restore and preserve the historic landmarks of said settlement, such purchase not to exceed one hundred and thirty acres. Any balance remaining after the purchase of the above mentioned tracts of land and the payment of the expenses incurred, shall be paid by the committee to the treasurer of the Ohio Archaeological and Historical Society and used by them in the work of laying out the site as a state park and improving the same."

From the language of this appropriation item it seems apparent that any expenditure of the monies therein appropriated is required to be made by a committee appointed after the passage and effective date of said House Bill No. 502. It will be observed that the item prescribes that, "the above appropriation shall be expended by a committee of five, two to be appointed by the president of the senate, two by the speaker of the house of representatives and one by the governor," the item further providing that "Said committee, when appointed, is authorized" to purchase the real estate specified. Obviously this language has reference to the president of the senate and the speaker of the house of representatives of the 87th General Assembly. So far as your communication discloses, no committee has been appointed under the appropriation item above set forth and it is my opinion that the monies appropriated in such item can only be expended by the committee provided for.

In this connection, however, it is deemed proper to point out that there is nothing in said item, nor is there any other law, that would prevent the same persons appointed under House Bill No. 80, supra, from being appointed a committee under the appropriation item above set forth.

With reference to the expenditure of any of the funds appropriated in the appropriation item above quoted for the purchase of real estate, your attention is directed to Section 12 of House Bill No. 502, supra, which provides in part as follows:

"No monies herein appropriated or reappropriated for the purchase of real estate or for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars shall be expended without the consent and approval of the Controlling Board herein provided for; such approval to be evidenced by the consent of not less than four members of the controlling board entered on the minutes. \* \* \*"

With reference to this section this department held in Opinion No. 918, rendered under date of August 26, 1927, that:

"By virtue of the terms of Section 12 of the act to make general appropriations, passed by the 87th General Assembly (House Bill 502), no monies therein appropriated or reappropriated for the purchase of real estate, regardless of amount, may be expended without the consent and approval of the Controlling Board, evidenced by the consent of not less than four members entered on the minutes."

In the opinion it was said as follows:

"This section was undoubtedly included in the appropriation act because of the present financial condition of the state, it being the manifest intention of the legislature to vest the Controlling Board with power to check the expenditure of state monies for additions and betterments, until such time as there were ample funds in the state treasury to take care of the neces-

sary running expenses of the state and the improvements for which appropriations were made.

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While there is no comma after the phrase in Section 12 of House Bill 502, supra, reading 'no monies herein appropriated or reappropriated for the purchase of real estate,' in view of the fact that the General Assembly has for the past several years required the approval of the Controlling Board before the expenditure of any monies appropriated for the purchase of real estate, regardless of amount, it is my opinion that such section should be construed as though a comma were placed after the words 'real estate.' That is to say, the section should be read to mean that no monies whatever, appropriated or reappropriated in the act in question, should be expended for the purchase of real estate without the consent and approval of the Controlling Board and that no monies therein appropriated or reappropriated should be spent for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars."

In view of the plain provisions of Section 12, it is clear that none of the monies appropriated in the appropriation item, supra, may be spent for the purchase of the Morris farm or any other real estate until the consent and approval of the Controlling Board has first been obtained.

For the reasons above set forth, I am retaining the abstract of title and other papers submitted with your letter of October 12th until such time as proper evidence is furnished this department to the effect that the committee provided for in the appropriation item under consideration has been duly appointed, and until the Controlling Board has given its consent and approval to the expenditure of the funds appropriated for the purchase of real estate.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1146.

APPROVAL, BONDS OF THE CITY OF NILES, TRUMBULL COUNTY,  
OHIO—\$3,500.00.

COLUMBUS, OHIO, October 14, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

1147.

COUNTY COMMISSIONERS—AUTHORITY TO BUILD ROADS AND  
BRIDGES WITHIN LIMITS OF MUNICIPAL CORPORATION.

SYLLABUS.

1. A board of county commissioners may lay out and establish a county road over a street already established within the limits of a municipal corporation, if such street be a