

"It is well settled that the compensation of a public officer must be fixed by statute."

I am, therefore, of the opinion that members of boards of education in village school districts may not lawfully be compensated for their services as such officials.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1914.

CONTROLLING BOARD—POWER TO AUTHORIZE TRANSFER OF MON-  
EYS UNDER SECTION 4, HOUSE BILL 510, 88th GENERAL ASSEMBLY  
CONSIDERED.

*SYLLABUS:*

*The Controlling Board may legally authorize a transfer of unencumbered funds in items appropriated under the heading "Additions and Betterments, Department of Public Welfare" in Section 1 of House Bill No. 510, 88th General Assembly, to the item therein entitled "London Prison Farm Development", but may not authorize the transfer of any of said funds to an item not appearing under such heading.*

COLUMBUS, OHIO, May 28, 1930.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication as follows:

"H. B. 510 passed by the 88th General Assembly makes certain appropriations for additions and betterments to the Department of Public Welfare. These additions and betterments include the erection of certain buildings, addition to the physical plants and the purchase of lands. The total additions and betterments so appropriated are \$1,125,125.00. Of the foregoing amount there has been expended, encumbered or plans have been made for encumbering approximately \$800,000.00 leaving a balance of approximately \$300,000.00 for which no specific plan has as yet been made.

May the Controlling Board legally authorize the expenditure of any or all of this balance for purposes other than the specific item named in the appropriation bill under the powers conferred upon the Controlling Board by Section Four of the Act? Specifically, we are submitting this question with the thought in mind that some portion of this fund might be made available by a transfer by the Controlling Board for the purpose of expanding the facilities of our penal institutions, either the institution at London or the initiation of a new penal institution at Grafton State Farm."

The board known as the Controlling Board has been created in various appropriation acts in which the powers and duties of such board are expressly defined and limited. Said board is a creature of legislative enactment, and it is fundamental that such boards have only such powers as are expressly conferred by law and those necessarily implied to carry the express powers to fruition. This principle has been laid down so often by the courts and this office that I deem it unnecessary to cite authority. Moreover, the powers granted to administrative boards with regard to

financial matters must be strictly construed and authority to permit the expenditure of public moneys can not be exercised unless clearly conferred by law.

It was held in the case of *State ex rel vs. Pierce, Auditor*, 96 O. S., 44, as disclosed by the third paragraph of the syllabus:

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

Keeping in mind the above principles the pertinent language of Section 4 of House Bill No. 510, 88th General Assembly to which you refer in your communication should be analyzed. Said section reads, so far as relevant to the question involved in your communication, as follows:

“The sums set forth in Sections 1 and 2 of this act opposite the several classifications of ‘Personal Service,’ ‘Maintenance,’ ‘Subsidy,’ and ‘Additions and Betterments’ shall not be expended for any other purposes except as in this section provided.

\* \* \*

The Controlling Board shall have power:

(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in Section 1 or 2 of this act, to expend the moneys so appropriated otherwise than in accordance with the details therein set forth, and for such purpose to authorize transfers of funds between the items entitled ‘Personal Service’ and ‘Maintenance’ and between items in the appropriation for ‘Total Additions and Betterments’ within the department, division or agency for which such an appropriation is made.

\* \* \*

It is apparent by the unequivocal terms of Section 4 (a) supra, that authority is granted to the Controlling Board to authorize your department to expend moneys appropriated in Section 1 of the Act for Additions and Betterments, Department of Public Welfare, otherwise than in accordance with the details set forth therein. However, it is equally apparent that such authority is restricted somewhat, for the Legislature in the same sentence has stated that for the purposes of expending money otherwise than in accordance with the details set forth, the Controlling Board may transfer between items in the appropriation for total Additions and Betterments.

You state in your communication that it is desired to expend unencumbered funds in Additions and Betterments at the London Prison Farm or Grafton State Farm. Looking at the items appearing under the heading, Additions and Betterments on pages 116, 117 and 118 of the pamphlet entitled “The Appropriation Acts of the 88th General Assembly of Ohio, 1929” there appears an item—London Prison Farm Development—on page 118, but nowhere an item for Grafton State Farm.

There is no doubt but that the Controlling Board may legally transfer any unencumbered funds in said items to London Prison Farm inasmuch as said board would then be authorizing a transfer between items within said appropriation for Additions and Betterments by the plain terms of Section 4 (a), supra. However, there appears to be no authority for the Controlling Board to transfer funds to items not appearing under the heading Additions and Betterments.

A study of provisions of past appropriation bills strengthens the conclusions I have reached. Section 4 of the General Appropriation Act of 1917, found in 107 O. L. 350, corresponded to Section 4 of House Bill No. 510 of the 88th General Assembly under discussion here, and provided so far as pertinent, as follows:

"Section 4. The sums set forth in the columns designated 'items' in sections 2 and 3 of this act, opposite the several classifications of detailed purposes, shall not be expended for any other purposes except as herein provided.

Authority to expend the moneys appropriated in sections 2 and 3 of this act otherwise than in accordance with such classifications of detailed purposes, but within the purpose for which appropriation is made, may be granted to any department, institution, board or commission for which appropriations are made in said sections, by a board to be known as the 'controlling board,'  
\* \* \*

Said board may authorize the expenditure of moneys appropriated in said sections 2 and 3 of this act within the purpose for which the appropriation is made, whether included in the detailed purposes for which such appropriations are distributed by 'items' in said section, or not.  
\* \* \*"

It may be noted that the Legislature by the use of the language: "Whether included in the detailed purposes for which such appropriations are distributed by 'items' in said section, or not," expressly authorized transfers to items not appearing in the section.

In an opinion of the Attorney General, reported in Opinions of the Attorney General for 1917, Volume 2, page 1238, it was stated in reference to the above section:

"However, section 4 itself provides how authority to deviate from the specifications of the column designated 'Items' may be made. Without quoting it, it provides for application to a 'controlling board, which may grant authority to expend the moneys appropriated \* \* \* otherwise than in accordance with such classifications of detailed purposes, but within the purpose for which the appropriation is made.' And said authority is expressly extended to cases in which the proposed purpose, which must be 'within the purpose for which the appropriation is made,' is not 'included in the detailed purposes for which such appropriation is distributed by items.' This is the case with respect to the situation about which you inquire."

The 1919 General Appropriation Bill contained exactly the same provisions in Section 4 as are found in Section 4 of the 1917 General Appropriation Bill which I have quoted above. In recent appropriation acts, namely 1921, 1923, 1925 and 1927, the following wording in Section 3 of the acts is used:

"Section 3. The sums set forth in section 1 of this act, opposite the several classifications of detailed purposes, shall not be expended for any other purposes except as herein provided.

Authority to expend the moneys appropriated for "Total Personal Service' and 'Total Maintenance' in section 1 of this act otherwise than in accordance with such classification of detailed purposes, but within the purpose for which appropriation is made, may be granted to any department, institution, board or commission for which appropriations are made in said section, by a board to be known as the 'controlling board, \* \* \*

Said board may authorize the expenditure of moneys appropriated in said section 1 of this act within the purpose for which the appropriation is made, whether included in the detailed purpose for which such appropriations are distributed in said section or not.  
\* \* \*"

From the provisions of the last mentioned acts, it may be noted that the Legislature only authorized the transfer of moneys appropriated for "Total Personal Service" and "Total Maintenance" from one classification to another under the same heading and did not permit the transfer from and to the different classifications under the general heading "Additions and Betterments", as it did in the 1917 and 1918 appropriation bills which I have already mentioned.

This construction is borne out by an opinion of this office appearing in Opinions of the Attorney General for 1927, Vol. II, page 1441. The fourth paragraph of the syllabus of that opinion states:

"In so far as the transfer of funds is concerned, subject to the limitation that the Controlling Board may not consent to the transfer of funds for the sole purpose of increasing an appropriation for a single salary (Opinion No. 687, 1927) such board is empowered to authorize a transfer of moneys from one detailed classification to another under the general heading 'Personal Service' and from one detailed classification to another under the general heading 'Maintenance.' The board is without power to authorize a transfer from one detailed classification to another in the group 'Additions and Betterments,' or from a detailed classification in one group to a classification in another group."

It may thus be seen that the Legislature in the appropriation bills of 1917 and 1919 granted to the Controlling Board the right to transfer items appearing under the heading "Additions and Betterments" to other items within the same general purpose whether they appeared in the section or not, but took away the right of transfer in "Additions and Betterments" entirely in the 1921, 1923, 1925 and 1927 appropriation acts.

It may be further noted that while the Legislature in the 1929 appropriation act has again authorized the transfer of items within Additions and Betterments, as was the case in 1917 and 1919, the phrase "whether included in the detailed purposes for which such appropriations are distributed by 'items' in said section or not" is not included, and no similar language is used to show an intention of authorizing the transfer to items not set forth in the section.

Applying the rule of strict construction which I have mentioned in a preceding paragraph, it is believed that the authority to transfer an item to one not included in the section has not been conferred.

It should be clearly understood that although the Controlling Board is not authorized to transfer money to be used for development at Grafton State Farm, all the unencumbered funds in the appropriations for Additions and Betterments may be transferred and used at the London Prison Farm.

Without further discussion, I am of the opinion that the Controlling Board may legally authorize a transfer of unencumbered funds in items appropriated under the heading "Additions and Betterments, Department of Public Welfare" in Section 1 of House Bill No. 510, 88th General Assembly, to the item therein entitled "London Prison Farm Development", but may not authorize the transfer of any of said fund to an item not appearing under such heading.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*