

382.

GENERAL ASSEMBLY—WHERE BY TWO-THIRDS VOTE MEMBERS ELECTED TO EACH BRANCH PROVIDE FOR PAYMENT OF EXTRA COMPENSATION—FORMER STATE OFFICER AFTER SERVICE PERFORMED—AUDITOR OF STATE AUTHORIZED AND DIRECTED TO ISSUE WARRANTS—COMPENSATION—TAX COMMISSION.

SYLLABUS:

When the General Assembly, by a two-thirds vote of the members elected to each branch thereof, provides for the payment of extra compensation to a former state officer, after the service shall have been rendered by such former officer, the auditor of state is authorized and directed to issue warrants in payment of said compensation.

COLUMBUS, OHIO, April 1, 1939.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“During the last session of the legislature Amended House Bill No. 715, commonly known as the Sundry Claims Bill, passed by the 92nd General Assembly and filed in the office of

the Secretary of State on May 21, 1937, carried the following items:

“Braden, George C., former Tax Commissioner, Warren, Ohio, settlement in full for the difference in his salary of \$4,000 per year and the salary of \$5,000 per year paid the other commissioners, for the two months of January and February, 1935, at the rate of \$83.33 for each month. Mr. Braden’s term of office ended March 1, 1935 (No. 3956).....\$166.66

Davis, Quincy A., member Tax Commission, State Office Building, Columbus, Ohio, settlement in full for the difference of \$1,000 per year in his salary of \$4,000 per year and the salary of \$5,000 per year paid the other Commissioners, for the years 1935 and 1936 (No. 3692).....\$2,000.00

Quincy A. Davis and George C. Braden were appointed by a former Governor at a salary of \$4,000 per year. At the time the legislature increased the salary of the tax commissioners to \$5,000 per year, the above named men were serving their term of office.

Section 2 of the above Act provides that the ‘claims shall be examined by the auditor of state as required by section 243, General Code, and he is hereby authorized and directed to make careful inquiry as to the validity of each and every claim for which appropriation is made herein and pay only so much thereof as may be found correct and just.’

We have been holding up these amounts because we believe that the payment of such accounts are contrary to the provisions of section 20, article 2 of the Constitution of the state of Ohio, which provides: ‘The General Assembly, in cases not provided for in this constitution shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.’

We respectfully request your opinion as to whether we can legally pay the claims in view of the provisions above quoted.”

Section 2 of Amended House Bill 715 of the 92nd General Assembly, as stated in your letter, reads in part as follows:

“Said claims shall be examined by the auditor of state as required by section 243, General Code, and he is hereby authorized and directed to make careful inquiry as to the validity of each and every claim for which appropriation is made herein and pay only so much thereof as may be found correct and just.”

From the above language it is at once apparent that if upon inquiry

by the auditor of state it is found that the claim in question is a valid one, he is then *authorized* and *directed* to pay the same.

Your inquiry resolves itself, then, into the sole question of whether or not the items set out in your letter constitute valid claims.

You state that in your opinion Section 20 of Article II of the Constitution of Ohio, which is quoted in full in your letter, prohibits the payment of said items. From a careful reading of said section, however, it appears that the applicability of the same depends entirely upon whether or not the terms of office of George C. Braden and Quincy A. Davis terminated before the effective date of Amended House Bill 715, *supra*. Said act was filed in the office of the Secretary of State on May 21, 1937, and became effective ninety days thereafter. The term of office of George C. Braden ended on March 1, 1935, and the term of office of Quincy A. Davis ended on March 18, 1937.

Therefore, the terms of both Mr. Braden and Mr. Davis having expired before the effective date of Amended House Bill 715, *supra*, the extra compensation to said officers provided for therein was for services which had already been rendered by them and such extra compensation in no way affected their salaries during their existing terms of office.

I am of the opinion, therefore, that the provisions of Section 20 of Article II of the Constitution of Ohio have no application to the facts in hand.

Germane to the question presented therein, however, is Section 29 of Article II of the Constitution of Ohio, which reads as follows:

“No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.”

In discussing the import of the above language, it was declared by the Court of Appeals in the case of *State ex rel Gindelsperger v. Wright, Auditor*, 24 C. C. (N. S.) 400; 34 O. C. D., 642, as follows:

“It (Section 29, Article II) provides for extra compensation to an officer, to a public agent, to a contractor. In each instance it is manifest that the constitution was intended to confer upon the legislature power to grant extra compensation to the individual for services rendered or contracts entered into. Such object can only be attained by a special act. * * * With the restriction that the act must be passed by a two-thirds vote of the Legislature, it becomes, when so passed, a binding act.”

See also, *State ex rel. Krieg vs. Tracy*, State Auditor, 47 O. App., p. 65; and *Fordyce v. Godman*, Auditor, 20 O. S., 1.

In the case of *State ex rel vs. Wright*, supra, the question arose as to whether or not deputy state supervisors of elections in Cuyahoga and Hamilton counties, appointed and qualified prior to the passage of an act of April 10, 1900 (94 O. L., 549), could draw additional compensation provided for in said act. Objection was made to the receipt of the additional compensation provided for by the act and such objection was sustained by the Supreme Court. That court held that the act by which it was attempted to provide such additional compensation was unconstitutional for the reason that it was not passed by a two-thirds vote of the two houses of the legislature.

On April 23, 1934 (97 O. L. 624), an act similar in all respects to the act of April 10, 1900, was passed by the legislature by a two-thirds vote. The court in passing on the latter act stated:

“This act attempts, as did the act of April 10, 1900, to provide additional compensation for deputy state supervisors serving in Cuyahoga County prior to August 6, 1900.

“We reached the conclusion in our investigation of the act of 1900, that the claim made by the relator and others was just and reasonable; that the legislature was fully justified in providing for the additional compensation, if it could be done legally. The only specification on which the former act was declared to be unconstitutional was that it had not been passed by a two-thirds vote. That objection does not lie against the present law. It was passed by a two-thirds vote.”

In the instant case the vote on Amended House Bill 715, supra, in the House was: Yea, 103, and Nay, none (1937 House Journal, p. 1132); and the vote thereon in the Senate was: Yea, 29, and Nay, none (1937 Senate Journal, p. 29). The numerical strength of the 92nd General Assembly was as follows: House, 138 members, and Senate, 36 members. Therefore, the above bill was passed by a two-thirds vote of the two houses of the legislature. Such being the case, it became, when so passed, a binding act.

Summarizing, it is therefore my opinion that the auditor of state, by reason of the passage of Amended House Bill 715 of the 92nd General Assembly, is authorized and directed to pay items 3956 and 3962 contained therein.

Respectfully,

THOMAS J. HERBERT,
Attorney General.