

which such building could be completed would be by submitting an additional issue to the electors or by the levy of a tax within the fifteen mill limitation or by submitting to the electors the question of levying a tax outside the fifteen mill limitation under the provisions of Section 5625-15, et seq., General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

198.

AMENDED HOUSE BILL NO. 203—APPROPRIATING MONEY FOR CLEVELAND STATE HOSPITAL—SUPERINTENDENT OF PUBLIC WORKS MUST RESERVE FUNDS FOR EQUIPMENT.

SYLLABUS:

Under the provisions of Amended House Bill No. 203, as enacted by the 88th General Assembly, which reappropriates money for "Cold Storage, Storeroom, Kitchen and Equipment," and "Cold Storage, Storeroom, Kitchen, Bakery and Equipment," for the Cleveland State Hospital, it is mandatory that in the construction of said buildings by the Superintendent of Public Works a reasonable amount be reserved for equipment.

COLUMBUS, OHIO, March 16, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Hon. Herbert B. Briggs, State Architect and Engineer, has requested my opinion as follows:

"Amended House Bill No. 203 of the 88th General Assembly contains the following reappropriations for the Cleveland State Hospital:

1. Cold Storage, Storeroom, Kitchen and Equipment (House Bill No. 502)—\$111,473.14.

2. Cold Storage, Storeroom, Kitchen, Bakery and Equipment (Hawthornden) (House Bill No. 502)—\$93,100.00.

Note: 1. above is an appropriation for a building at the institution in Cleveland. 2. above is for a building at the Hawthornden Farm of the Cleveland State Hospital.

Section 4 of the Amended House Bill No. 203 provides:

"The appropriations made herein for buildings or structures, including remodeling and repairs, shall be for a complete operating unit ready for use and occupancy, except furnishings, and shall include complete heating, lighting, ventilating and plumbing systems, including lighting fixtures, when such systems are authorized or necessary, unless otherwise specifically provided in the item of appropriation."

If Section 4 applies to equipment for the building noted in 1. above, it will be necessary to include in the cost of the building shelving, bins, and other similar facilities for storage purposes in the storeroom; refrigerating apparatus and insulation therefor in the cold storage part; ranges, steam kettles, and all other essential kitchen and scullery equipment in the kitchen; and elevators to properly serve the building.

The cost of the above equipment is roughly approximated at \$30,000.00. Deducting \$30,000.00 from the \$111,473.14 appropriation leaves approximately \$81,000.00 for the construction of the building and service charges thereon. A building of size to meet the urgent needs of the institution cannot be constructed at a cost of \$81,000.00.

The appropriation bill now pending in the 88th General Assembly carries a request for \$18,000.00 for equipment (additional) for the above building.

Hawthornden Farm is in process of development. Four buildings have been completed or are being completed at the farm. A comprehensive development scheme has been worked out for the location and construction of future buildings to increase the housing facilities of the institution.

The building noted in 2. above should, in the interest of future economy, be of size and plan arrangement to meet the future needs of the institution, or its plan arrangement should be such as to make possible future additions to it. If the latter idea is followed the present building should be of size and plan arrangement to adequately fit into a future completed building.

The equipment to be installed under this appropriation will not cost as much as the equipment in the city building, as the present and early housing facilities will not make necessary extensive equipment. However, the building to be constructed under this appropriation should be of size and arrangement to make possible additions to the equipment as needs develop.

I respectfully ask an opinion on the following questions:

- a. Does the provision of Section 4 apply to equipment?
- b. Does the provision of Section 4 apply to fixed or permanently built-in-place equipment only?
- c. Does the provision of Section 4 apply to removable equipment as ranges, steam kettles, sinks, potato peelers, etc.?
- d. Can the above \$18,000.00 equipment request, if enacted into law, be applied and used for the equipment of the city building?

Amended House Bill No. 203 of the 88th General Assembly was under consideration in my opinion No. 134, rendered to you February 28, 1929. This was an emergency measure, as pointed out in said opinion. It is believed that your communication sets forth the provisions of said bill sufficiently for the purpose of the consideration of your question.

The first question which you submit is whether the provisions of Section four of said Amended House Bill No. 203 apply to "equipment." What is included within the term "equipment" is a question rather difficult to determine. Bouvier's Law Dictionary defines the term "equipment" as follows:

"Furnishings for the required purposes. In a legacy to be applied toward the rebuilding and equipment of a hospital it was held equipment meant everything required to convert an empty building into a hospital."

However, it is believed that, in determining what is equipment, consideration must be given to all of the language used in a given appropriation act, together with all the facts and circumstances surrounding the nature of the construction or improvement, and the purpose of the same. It follows that it will be exceptionally difficult to lay down any hard and fast rule with reference to the meaning of said term. The context of the particular bill under consideration will have to be considered in each instance in connection with the project which is being constructed.

Section four of the act under consideration is clear that the buildings proper are to be constructed together with heating, lighting, ventilating and plumbing system and lighting fixtures. Said section is specific in its provisions that "furnishings" are not to be included within such section. However, the concluding phrase specifically provides that the provisions of the section may be modified by the language of a specific item in the appropriation bill. The two items which you quote from said bill both include the word "equipment" as coming within the appropriation made. Therefore it must be concluded that the language of the specific items of appropriation will control over any language used in Section four of the bill with reference to what is and what is not to be included within the appropriation. Taking the language of the appropriation bill as a whole, I am inclined to the view that "furnishings" are not necessarily equipment, although in view of the legal definition hereinbefore set forth, there may be considerable difficulty in distinguishing "furnishings" from equipment." Nevertheless, the particular items to which you refer, as hereinbefore stated, expressly include equipment and therefore the amounts therein appropriated may not be expended without reserving therefrom a sufficient amount for equipment. In other words, Section 22 of Article 2 of the Constitution of Ohio provides in substance that no money may be drawn from the state treasury except in pursuance of specific appropriations made by law. It follows, therefore, that when the Legislature has indicated in an item of appropriation that the moneys therein appropriated are to be used for separate and distinct things, all of the money may not be expended for a part of the subjects enumerated, thereby leaving no amount for one or more of the specific things enumerated. In other words, in view of the specific facts which you submit, your department may not legally expend the moneys in either item mentioned without reserving a reasonable amount for equipment. The conclusion that has been reached herein makes it unnecessary to consider questions b and c, as submitted.

In question d you inquire with reference to the result in the event that the Legislature in the general appropriation bill carries an item of \$18,000.00 for equipment for one of the buildings which you mention. In as much as the Legislature in carrying an item in the general appropriation bill of the 88th General Assembly for the equipment of one of the buildings mentioned in Amended House Bill No. 203, in the event it becomes a law, will be presumed to have had knowledge of the provisions of the former act, such action must be regarded as authorizing the use of such amount in addition to any sums allotted for said purpose under the original appropriation. The use of the word "additional" in connection with said item is another expression to the effect that it was the intent of the Legislature in the enactment of Amended House Bill No. 203 that some moneys were to be included within the said original appropriations for equipment. However, notwithstanding the provisions of Amended House Bill No. 203, wherein equipment is included within the specific items for the buildings you mention, undoubtedly the Legislature could, either by special act for said purpose or in the general appropriation bill if it saw fit, make appropriations for equipment and use language sufficient to indicate that said moneys are to be used in lieu of the moneys hereinbefore appropriated for said purpose, and further could by appropriate language authorize the release of the funds provided in Amended House Bill No. 203 in so far as the equipment for said buildings is concerned. In view of what has been said, however, until such action of the Legislature is taken, it will be necessary for your department to take into consideration the express provisions of Amended House Bill No. 203, to the effect that equipment is included within the appropriations for the buildings about which the State Architect inquires.

Respectfully,
GILBERT BETTMAN,
Attorney General.